



# **EXHIBIT N**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FREDERICK F. FAGAL, JR., ) CIVIL ACTION  
                              )  
Plaintiff                  )  
                              )  
-vs-                        )  
                              )  
MARYWOOD UNIVERSITY,      )  
                              )  
Defendant                  ) NO. 3:14-cv-02404-ARC

- - -  
Deposition of Patricia E. Dunleavy, Ph.D.

Thursday, August 11, 2016

- - -  
The deposition of PATRICIA E. DUNLEAVY, Ph.D.,  
called as a witness by the Plaintiff, pursuant to  
notice and the Pennsylvania Rules of Civil  
Procedure pertaining to the taking of depositions,  
taken before me, the undersigned, Karin E. Volpitta,  
a Notary Public in and for the Commonwealth of  
Pennsylvania, at the Radisson Lackawanna Station  
Hotel, 700 Lackawanna Avenue, Scranton,  
Pennsylvania 18503, commencing at 9:01 a.m., the  
day and date above set forth.

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| Page 14  | Page 16   |
|--|---|
| <p>1 A I don't recall.</p> <p>2 MR. COHEN: Let's make this Dunleavy 3.</p> <p>3 (Dunleavy Exhibit No. 3 was marked</p> <p>4 for identification.)</p> <p>5 BY MR. COHEN:</p> <p>6 Q It's double-sided but most of the backside</p> <p>7 is redacted. If you could briefly review this</p> <p>8 because it's so short and let me know when you're</p> <p>9 finished.</p> <p>10 A (Witness reviews document.)</p> <p>11 Q And do you recognize this document?</p> <p>12 A Yes.</p> <p>13 MR. COHEN: Wait a second, we have different</p> <p>14 documents.</p> <p>15 (At this time there was a brief</p> <p>16 discussion held off the record.)</p> <p>17 BY MR. COHEN:</p> <p>18 Q Do you recognize this document?</p> <p>19 A Yes, I do.</p> <p>20 Q And this is an e-mail chain first. The</p> <p>21 first e-mail is from Dr. Levine to you dated</p> <p>22 January 17th, 2012 at 12:11 p.m.; right?</p> <p>23 A Yes.</p> <p>24 Q And the second e-mail is from you to</p>  | <p>1 just file a civil rights complaint, right?</p> <p>2 MS. PEET: Objection to the form.</p> <p>3 THE WITNESS: I can't speak for Dr. Levine.</p> <p>4 MR. COHEN: Let's make this Dunleavy 4.</p> <p>5 (Dunleavy Exhibit No. 4 was marked</p> <p>6 for identification.)</p> <p>7 BY MR. COHEN:</p> <p>8 Q Do you recognize this document?</p> <p>9 A Yes, that's my handwriting.</p> <p>10 Q Now, I found a lot of notes in Marywood's</p> <p>11 production which are the same handwriting and I</p> <p>12 couldn't always read it so I'm going to ask you</p> <p>13 today for you to read it to me and/or explain. Can</p> <p>14 you read this aloud?</p> <p>15 A Yes. This is notes I took from what would</p> <p>16 have been probably a phone call with Tony Spinillo,</p> <p>17 who was -- or is the CIO at Marywood. The date is</p> <p>18 January 8th, 2012. And the information that Tony</p> <p>19 gave me was about e-mails and how far back we save</p> <p>20 them.</p> <p>21 So he told me that ten years were backed up</p> <p>22 and can't be deleted. If something was sent to</p> <p>23 Marywood, it's saved or if it's sent from here,</p> <p>24 meaning from Marywood's e-mail, that would also be</p>                          |
| Page 15  | Page 17   |
| <p>1 Dr. Levine the same day, 8:45 p.m.; right?</p> <p>2 A Yes.</p> <p>3 Q Now, you wrote to Dr. Levine, "Internally</p> <p>4 you can file a formal complaint under the Civil</p> <p>5 Rights Policy." Correct?</p> <p>6 A That's correct.</p> <p>7 Q Do you know if Dr. Levine ultimately did</p> <p>8 file a formal complaint under Marywood's Civil</p> <p>9 Rights Policy?</p> <p>10 A He did not.</p> <p>11 Q And then the next sentence from you is,</p> <p>12 "We're exploring options from the University</p> <p>13 perspective with or without a formal complaint from</p> <p>14 any individual." Did I read that correctly?</p> <p>15 A Yes.</p> <p>16 Q Now, what options was the University</p> <p>17 exploring at this time?</p> <p>18 A I don't remember.</p> <p>19 Q Do you know what Dr. Levine meant when he</p> <p>20 asked you about possible responses for him</p> <p>21 personally?</p> <p>22 A Yes. He was so offended and angry by the</p> <p>23 videos that he wanted to sue Dr. Fagal himself.</p> <p>24 Q But he wasn't so offended that he didn't</p> | <p>1 saved. The last line, I believe, says "e-mail gets</p> <p>2 archive."</p> <p>3 MR. COHEN: Let's make this Dunleavy 5.</p> <p>4 (Dunleavy Exhibit No. 5 was marked</p> <p>5 for identification.)</p> <p>6 BY MR. COHEN:</p> <p>7 Q And do you recognize this document?</p> <p>8 A Yes, that's my handwriting.</p> <p>9 Q And could you read this aloud, please.</p> <p>10 A Certainly. This is dated January 20 of 2012</p> <p>11 and it's a note saying that I called Dave Elliott</p> <p>12 at 7:25 in the morning and that he will -- "WCB" is</p> <p>13 will call back. I believe this means he called at</p> <p>14 8:39 and that he told me he is generally on campus</p> <p>15 by 8:20 and that he would check Sister's office --</p> <p>16 that would be Sister Anne Munley's office -- for</p> <p>17 the layout of her conference room area on Friday</p> <p>18 and that -- then I have "Ok with Fran." That would</p> <p>19 be Sister Anne's secretary. She'll tell Sister</p> <p>20 Anne Munley, SAM, that Dave Elliott would come up</p> <p>21 and check the office for the layout.</p> <p>22 Q And who is Dave Elliott?</p> <p>23 A He was the Senior Director for Campus</p> <p>24 Safety. I don't remember his exact title.</p> |

| Page 18  | Page 20   |
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| <p>1     Q Why would he check the layout of Sister<br/>2     Munley's office?</p> <p>3     A Sister wanted him to be outside the office<br/>4     when she met with Dr. Fagal because she wasn't sure<br/>5     what Dr. Fagal might do so she was concerned about<br/>6     a potential threat and wanted security presence<br/>7     outside of the meeting.</p> <p>8     Q So this note again is dated January 20,<br/>9     2012; right?</p> <p>10    A Yes.</p> <p>11    Q So it would be fair to say that as early as<br/>12    January 20th, 2012 President Munley was planning to<br/>13    bring Professor Fagal in for a meeting about the<br/>14    videos?</p> <p>15    A Yes.</p> <p>16    Q And that meeting ultimately happened on<br/>17    January 23rd, 2012; right?</p> <p>18    A Yes.</p> <p>19       MR. COHEN: Let's have this marked as<br/>20    Dunleavy 6.</p> <p>21       (Dunleavy Exhibit No. 6 was marked<br/>22       for identification.)</p> <p>23    BY MR. COHEN:</p> <p>24    Q This is double-sided also. Could you just</p>   | <p>1     A Yes.</p> <p>2     Q And Dr. Levine mentions that Professor Fagal<br/>3     left him a telephone message, right?</p> <p>4     A Yes, that's what the e-mail says.</p> <p>5     Q And then at 1:04 p.m. you responded and the<br/>6     first thing you said was, "Oh, yes, very."<br/>7     Correct?</p> <p>8     A Yes.</p> <p>9     Q And by that you meant, Oh, yes, very<br/>10    interesting?</p> <p>11    A Yes.</p> <p>12    Q And why did you think that was interesting?</p> <p>13    A It just was that Dr. Fagal would call Alan<br/>14    Levine at home.</p> <p>15    Q And you told Dr. Levine to save the message,<br/>16    right?</p> <p>17    A I did.</p> <p>18    Q Do you know whether Dr. Levine did, in fact,<br/>19    save the message?</p> <p>20    A I have no idea.</p> <p>21       MR. COHEN: And this is more for Stephanie,<br/>22       but if it exists, do you think that we could try to<br/>23       obtain that message?</p> <p>24       MS. PEET: It is my understanding it has not</p>  |
| Page 19  | Page 21   |
| <p>1     read this to yourself and let me know when you're<br/>2     finished.</p> <p>3     A (Witness reviews the document.) Okay.</p> <p>4     Q Do you recognize this document?</p> <p>5     A Yes.</p> <p>6     Q And the first e-mail in the chain is from<br/>7     Dr. Levine to you and someone named Mike. I assume<br/>8     that's Mike Foley?</p> <p>9     A I would assume that as well.</p> <p>10    Q And here Dr. Levine is sort of laying out a<br/>11    script for bringing Professor Fagal in to speak<br/>12    with President Munley about the videos; correct?</p> <p>13       MS. PEET: Objection to the form.</p> <p>14       THE WITNESS: That's what it appears to be,<br/>15    yes.</p> <p>16    BY MR. COHEN:</p> <p>17    Q Now, before Dr. Levine sent this first<br/>18    e-mail in this chain, did you meet with him or<br/>19    communicate with him about how Professor Fagal<br/>20    would be handled the next day?</p> <p>21    A I don't remember.</p> <p>22    Q And then there's an e-mail in this chain<br/>23    sent on January 21st, 2012 at 10:33 p.m. where<br/>24    Dr. Levine is e-mailing you; correct?</p> | <p>1     been saved.</p> <p>2       MR. COHEN: Let's make this Dunleavy 7.<br/>3       (Dunleavy Exhibit No. 7 was marked<br/>4       for identification.)</p> <p>5    BY MR. COHEN:</p> <p>6       Q This is double-sided as well. You don't<br/>7       have to read the whole thing but let me know<br/>8       whether you recognize this.</p> <p>9       A I do.</p> <p>10      Q And what is this document?</p> <p>11       A These are talking points that I typed up for<br/>12       Sister Anne based on points that she raised and<br/>13       asked me to just put them in writing for her, and<br/>14       then she reviewed and -- but it was based on<br/>15       conversations and her directive and they were<br/>16       talking points for her meeting with Dr. Fagal.</p> <p>17       Q Now, there's no date on this document but do<br/>18       you have any idea when you might have -- if the<br/>19       meeting with Dr. Fagal was held on the morning of<br/>20       January 23, 2012, when do you think you might have<br/>21       generated this?</p> <p>22       A I don't remember.</p> <p>23       Q Now, the seventh bullet point down begins,<br/>24       "Tell Fagal that." Do you see that?</p> |

| Page 38  | Page 40  |
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| <p>1 but you do know what she told you to write down;<br/>2 right?</p> <p>3 A Yes.</p> <p>4 Q And among the things she told you to write<br/>5 down were possibilities that Professor Fagal would<br/>6 be suspended, that he could retire, ultimately that<br/>7 President Munley could recommend his termination;<br/>8 correct?</p> <p>9 A Yes.</p> <p>10 Q So you knew, at least from what President<br/>11 Munley was telling you, that this meeting with<br/>12 Professor Fagal could end his career at Marywood;<br/>13 correct?</p> <p>14 MS. PEET: Objection to the form.</p> <p>15 THE WITNESS: The creation and distribution<br/>16 of the videos, if Dr. Fagal admitted to those, would<br/>17 have been what resulted in his suspension. He freely<br/>18 chose to do that.</p> <p>19 BY MR. COHEN:</p> <p>20 Q Okay. But I thought you just testified that<br/>21 going to the meeting you weren't absolutely sure<br/>22 that he even generated the videos, correct?</p> <p>23 A Correct, if he admitted. That's why the<br/>24 first question was did you author and did you send.</p>   | <p>1 Fagal on January 23rd, 2012, at that time how long<br/>2 had you been -- at that time you were Vice<br/>3 President for Human Resources; correct? Is that<br/>4 the exact terminology?</p> <p>5 A No. I think I was still Assistant Vice<br/>6 President. I think I became Associate Vice<br/>7 President in 2013, but I'm not positive.</p> <p>8 Q Would it be fair to say that you were<br/>9 essentially in charge of HR at Marywood at that<br/>10 time?</p> <p>11 A Yes.</p> <p>12 Q And at that time, the meeting on<br/>13 January 23rd, 2012, how long had you been<br/>14 essentially in charge of Marywood's HR?</p> <p>15 A Since 19 -- no, I'm sorry, since 1984.</p> <p>16 Q So a long time?</p> <p>17 A A long time.</p> <p>18 Q And Professor Fagal was certainly not the<br/>19 first Marywood employee that you saw being<br/>20 disciplined, correct?</p> <p>21 A That's correct.</p> <p>22 Q And the meeting with Professor Fagal on<br/>23 January 23rd, 2012 wasn't the first meeting that<br/>24 you had with an employee where President Munley or</p>   |
| Page 39  | Page 41  |
| <p>1 If he admitted to it then and that was his choice<br/>2 to have done that, that would have resulted in a<br/>3 suspension or any of the other options.</p> <p>4 Q Would it have been more reasonable to<br/>5 provide Professor Fagal with more than 15 minutes<br/>6 notice of this meeting on January 23rd, 2012?</p> <p>7 MS. PEET: Objection to the form.</p> <p>8 THE WITNESS: I don't think so.</p> <p>9 BY MR. COHEN:</p> <p>10 Q Let me ask you this, and this is a<br/>11 hypothetical, I know that, but if you had sent the<br/>12 e-mail that Professor Fagal had and generated the<br/>13 videos that he posted on YouTube, would you have<br/>14 preferred more than 15 minutes' notice of a meeting<br/>15 with the President, was asking you questions that<br/>16 the answers to which could lead to termination?</p> <p>17 MS. PEET: Objection; calls for speculation.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: First of all, I want it on the<br/>20 record I would never, ever send an e-mail or videos like<br/>21 that. But, no, if I did that kind of a thing, I<br/>22 wouldn't expect any notice.</p> <p>23 BY MR. COHEN:</p> <p>24 Q So going into this meeting of Professor</p> | <p>1 a previous President wanted more information from<br/>2 an employee about whether he did something and, if<br/>3 so, what explanations he or she could provide;<br/>4 correct?</p> <p>5 A I don't remember because you specified a<br/>6 President. It may have been other administrators.</p> <p>7 Q Any other administrator.</p> <p>8 A So rephrase the question so I can answer it<br/>9 correctly, I'm sorry.</p> <p>10 Q The meeting that you held with Professor<br/>11 Fagal on January 23rd, 2012 was not the first<br/>12 meeting that you participated in with a Marywood<br/>13 employee where he or she was asked whether he or<br/>14 she did something and, if so, why?</p> <p>15 MS. PEET: Just for classification, there's<br/>16 no testimony that Dr. Dunleavy held the meeting on<br/>17 January 23rd. You can answer.</p> <p>18 BY MR. COHEN:</p> <p>19 Q Participated.</p> <p>20 A That's correct.</p> <p>21 Q Now, prior to the January 23rd, 2012 meeting<br/>22 with Professor Fagal, was it your practice to offer<br/>23 only 15 minutes' notice of a meeting where<br/>24 discipline could potentially be meted out?</p> |

| Page 86  | Page 88  |
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| <p>1 probably to the poster incident which, again, was a<br/>2 separate incident to me.</p> <p>3 BY MR. COHEN:</p> <p>4 Q And underneath "Survey," does that say<br/>5 "Deans"?</p> <p>6 A Yes.</p> <p>7 Q Do you know what that refers to?</p> <p>8 A Most of these things -- in fact, I have<br/>9 written on the right that these issues, my word,<br/>10 were never in his personnel file. So just<br/>11 checking, were there other things in the Dean's<br/>12 file and would they be part of this request, would<br/>13 it be fair or not fair to provide those.</p> <p>14 MR. COHEN: Let's make this Dunleavy 20.<br/>15 (Dunleavy Exhibit No. 20 was marked<br/>16 for identification.)</p> <p>17 BY MR. COHEN:</p> <p>18 Q This is an e-mail from your personal address<br/>19 to your work address, right?</p> <p>20 A Yes.</p> <p>21 Q And what does CJ mean?</p> <p>22 A I have no idea. I know at the time I would<br/>23 have known.</p> <p>24 Q And how does this relate to Qing cabinet?</p>  | <p>1 from that dinner, correct?<br/>2 A That's correct.<br/>3 Q And was this because he was suspended or<br/>4 because you felt he didn't deserve it or all of the<br/>5 above?</p> <p>6 A Because he was suspended.<br/>7 MR. COHEN: Let's make this Dunleavy 22.<br/>8 (Dunleavy Exhibit No. 22 was marked.<br/>9 for identification.)</p> <p>10 BY MR. COHEN:</p> <p>11 Q These are more of your handwritten notes,<br/>12 right?</p> <p>13 A Yes.</p> <p>14 Q And could you read this aloud?</p> <p>15 A Certainly. It's notes from again either a<br/>16 call or a meeting with Sister Anne dated March 6th,<br/>17 2012 regarding Fagal. It says "Sister Gail Cabral<br/>18 e-mail. Then Conlogue, Arter, Sadlack. Copy<br/>19 video, question mark."<br/>20 "Sister Anne will send Sister Gail to me.<br/>21 Meeting notes from 1/23/12, video and other<br/>22 documents, question mark."</p> <p>23 Q And who is Sister Gail Cabral.<br/>24 A Sister Gail Cabral is a tenured faculty</p>  |
| Page 87  | Page 89  |
| <p>1 A I don't know. These could all have been<br/>2 very distinct issues. What happens to me sometimes<br/>3 when I get home at night, I think of a thousand<br/>4 things and I'll send myself the briefest of notes<br/>5 knowing that in the morning it will trigger, but it<br/>6 doesn't trigger anything today.</p> <p>7 MR. COHEN: Let's make this Dunleavy 21.<br/>8 (Dunleavy Exhibit No. 21 was marked<br/>9 for identification.)</p> <p>10 BY MR. COHEN:</p> <p>11 Q Do you recognize this document?</p> <p>12 A Yes.</p> <p>13 Q And this is an e-mail from you to Sister<br/>14 Anne dated February 29th, 2012. Who is John Coval?</p> <p>15 A John Coval is the Director of Conferences<br/>16 and Special Events.</p> <p>17 Q And this dinner that is referred to in this<br/>18 e-mail, is this just an informal thing for people<br/>19 who have worked 25 years or longer at Marywood?</p> <p>20 A There's a dinner every year for faculty and<br/>21 administrators who are honored at 20, 25, 30, etc.<br/>22 There's another event for staff that's always held<br/>23 that same week, so there's the Cor Mariae dinner.</p> <p>24 Q And Professor Fagal was going to be excluded</p> | <p>1 member who I believe was President of the Faculty<br/>2 Senate that year.</p> <p>3 MR. COHEN: Let's make this Dunleavy 23.<br/>4 (Dunleavy Exhibit No. 23 was marked<br/>5 for identification.)</p> <p>6 BY MR. COHEN:</p> <p>7 Q Do you recognize this document?</p> <p>8 A Yes.</p> <p>9 Q And this is an e-mail from you to Sister<br/>10 Anne dated March 7th, 2012 at 1:23 a.m.?</p> <p>11 A That's what it says. The time stamp seems<br/>12 very odd to me. I work late but not that late.</p> <p>13 Q And again, you're referring to a Sister<br/>14 Gail. Is this Sister Gail Cabral?</p> <p>15 A Yes.</p> <p>16 Q And you say "I received an e-mail from<br/>17 Sister Gail this evening. We should be able to<br/>18 meet tomorrow afternoon. I'm waiting for her to<br/>19 confirm the time."</p> <p>20 What was the purpose of the meeting referred<br/>21 to here?</p> <p>22 A This was the meeting that was referenced in<br/>23 the Dunleavy 22 exhibit where Sister Anne told<br/>Sister Gail to contact me. Sister Gail, I think,</p> |

# EXHIBIT O

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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FREDERICK F. FAGAL, JR. : CIVIL ACTION  
Plaintiff, : NO. 3:14-cv-02404-ARC  
vs. : (JUDGE CAPUTO)  
MARYWOOD UNIVERSITY, :  
Defendant. :  
- - -

June 28, 2016

Oral deposition of Erin Ann Sadlack,  
taken pursuant to notice, was held at the  
Radisson Lackawanna Station Hotel, Suite 206, 700  
Lackawanna Avenue, Scranton, Pennsylvania,  
commencing at 9:35 a.m., on the above date,  
before Judy A. Black, a Registered Professional  
Court Reporter and Notary Public in and for the  
Commonwealth of Pennsylvania.

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MAGNA LEGAL SERVICES

Seven Penn Center, 8th Floor

1635 Market Street

Philadelphia, Pennsylvania 19103

(866) 624-6221

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| <p style="text-align: right;">Page 10</p> <p>1 did you review any documents, without telling me what<br/>2 they were?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, at some point in 2012, do<br/>5 you recall serving on a faculty grievance committee<br/>6 to adjudicate a grievance that Professor Fagal had<br/>7 filed against President Munley?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall the general substance<br/>10 of Professor Fagal's grievance?</p> <p>11 A. Yes.</p> <p>12 Q. And what was that, to your<br/>13 understanding?</p> <p>14 A. Professor Fagal had several aspects of<br/>15 his grievance, that he -- ultimately it's that he was<br/>16 terminated by Marywood University, but he had several<br/>17 procedural complaints about how that process had come<br/>18 to be.</p> <p>19 Q. Okay.</p> <p>20 MR. COHEN: I'd like to have this marked<br/>21 as exhibit Sadlack-1, please.</p> <p>22 (Sadlack-1, E-Mail chain, Bates Nos.<br/>23 DEF003295-297, is received and marked for<br/>24 identification.)</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>   | <p style="text-align: right;">Page 12</p> <p>1 grievance is a subcommittee of faculty senate, so<br/>2 they had to run an election to convene the committee.<br/>3 So that was -- so she met with us --<br/>4 once we had been elected, she met with us to give us<br/>5 the grievance, but after that, no.<br/>6 Q. Okay. And the three professors that<br/>7 were chosen for the committee, what were they -- how<br/>8 large in general was the faculty grievance committee?<br/>9 I mean, did they select three from a larger group<br/>10 or --<br/>11 A. No, the way it works is that the only<br/>12 people who were eligible for the committee -- you<br/>13 must be tenured, and you cannot serve on rank and<br/>14 tenure or on the faculty development committee, and<br/>15 so they issue a list of all of the names of people<br/>16 who are eligible for the committee. They do a<br/>17 SurveyMonkey, and then people are elected by all the<br/>18 campus faculty, and then -- so the three of us were<br/>19 elected.<br/>20 Q. So there was just you three?<br/>21 A. Correct, to my knowledge.<br/>22 MR. COHEN: Okay. Let's mark this as<br/>23 Sadlack-2.<br/>24 (Sadlack-2, Letter dated March 26, 2012,<br/>MAGNA LEGAL SERVICES)</p> |
| <p style="text-align: right;">Page 11</p> <p>1 Q. And if you could just take a look at<br/>2 this for a moment and let me know when you're<br/>3 finished.</p> <p>4 A. Yes.</p> <p>5 Q. And do you recognize this document?</p> <p>6 A. Yes.</p> <p>7 Q. And what are we looking at?</p> <p>8 A. This was the substance of Dr. Fagal's<br/>9 grievance. These were the charges that he asked us<br/>10 to look into to investigate as a grievance committee.</p> <p>11 Q. And when you say the grievance<br/>12 committee, who -- you were part of that committee,<br/>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And who else?</p> <p>16 A. Dr. Bill Conlogue and Dr. Trish Arter.</p> <p>17 Q. And did Sister Cabral have any role with<br/>18 regard to the committee?</p> <p>19 A. Only in the sense that she was the<br/>20 president of faculty senate, and when a person has a<br/>21 grievance, they typically contact the head of faculty<br/>22 senate to let them know that a grievance is going to<br/>23 be filed if the grievance committee is not in<br/>existence, which it wasn't at the time, because</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 13</p> <p>1 Bates No. DEF002088, is received and marked for<br/>2 identification.)</p> <p>3 Q. And if you could briefly review this and<br/>4 let me know when you're finished, Dr. Sadlack.</p> <p>5 A. Yes.</p> <p>6 Q. And do you recognize this document?</p> <p>7 A. Yes.</p> <p>8 Q. And what is this?</p> <p>9 A. This is the letter that I sent to<br/>10 Dr. Fagal at the conclusion of the grievance<br/>11 committee's investigation.</p> <p>12 Q. And it's dated March 26, 2012?</p> <p>13 A. Yes.</p> <p>14 Q. And in this document, you sort of<br/>15 summarized five complaints or arguments that<br/>16 Professor Fagal made in his grievance, and you were<br/>17 informing him that in the committee's view, they<br/>18 lacked merit?</p> <p>19 A. Correct.</p> <p>20 Q. And in this letter, you did not provide<br/>21 any reasoning for the committee's decision, right?</p> <p>22 A. Correct.</p> <p>23 Q. And why not?</p> <p>24 A. The -- according to the grievance</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>  |

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| <p style="text-align: right;">Page 14</p> <p>1 policies, the actions of the grievance committee are<br/>2 not themselves grievable, and it seemed it would only<br/>3 invite further argumentation. It was better to be<br/>4 succinct.</p> <p>5 Q. And was that your decision or did you --<br/>6 was this a matter for discussion that you were just<br/>7 going to announce your decision without any<br/>8 reasoning?</p> <p>9 A. The committee felt that -- the other<br/>10 members of the committee, we agreed that this was how<br/>11 we wanted to communicate.</p> <p>12 Q. Okay. And, by the way, were you -- was<br/>13 there a chair of the committee?</p> <p>14 A. I was the chair of the committee.</p> <p>15 Q. And as the chair, did you have -- what<br/>16 was the role of the chair?</p> <p>17 A. Frankly, I would say I was elected the<br/>18 chair by showing up five minutes late to our first<br/>19 meeting. This was not something that we took that<br/>20 seriously in terms of anyone desiring the position.<br/>21 It's more additional paperwork. It was my job as<br/>22 chair to communicate with Dr. Fagal and with the<br/>23 decision maker, but beyond that, that was the -- that<br/>24 was pretty much the extent of my role.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 16</p> <p>1 Q. Okay. Now, in one of the -- let me ask<br/>2 this: One of the attachments is labeled "Grievance<br/>3 Committee Notes," and it's typewritten. Do you<br/>4 recall taking any written, like, handwritten notes<br/>5 about the meetings that you had or the deliberations<br/>6 that you had?</p> <p>7 A. I don't remember.</p> <p>8 Q. When you were deliberating over<br/>9 Professor Fagal's grievance, do you remember sitting<br/>10 with a laptop or --</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you remember whether someone was --<br/>13 someone on your committee was designated to take<br/>14 minutes?</p> <p>15 A. No, there was no one.</p> <p>16 Q. Okay. So this typewritten document<br/>17 labeled "Grievance Committee Notes," did you generate<br/>18 this?</p> <p>19 A. I did.</p> <p>20 Q. Okay. And did you generate it from<br/>21 memory or --</p> <p>22 A. It was a mixture of my calendar to get<br/>23 the dates and then memory for what we had said.</p> <p>24 Q. Okay. Now, at the bottom of -- if you<br/>MAGNA LEGAL SERVICES</p> |
| <p style="text-align: right;">Page 15</p> <p>1 Q. So it didn't give you extra voting<br/>2 authority or --</p> <p>3 A. Absolutely not.</p> <p>4 MR. COHEN: Could we mark this as<br/>5 Sadlack-3, please.</p> <p>6 (Sadlack-3, Multipage document, Bates<br/>7 Nos. DEF003417-423, is received and marked for<br/>8 identification.)</p> <p>9 Q. Could you review this and let me know<br/>10 when you're finished?</p> <p>11 A. Yes.</p> <p>12 Q. And, Dr. Sadlack, do you recognize this<br/>13 document and its attachments?</p> <p>14 A. Yes.</p> <p>15 Q. And what is the document that I just<br/>16 handed to you?</p> <p>17 A. These were -- as I said before, the<br/>18 whole committee was the one that -- we all agreed<br/>19 what our findings were going to be, and so once I had<br/>20 written those up, I wanted to make sure that I had<br/>21 their approval for the letters that I was going to be<br/>22 sending to Dr. Fagal, to Sister Anne Munley, and a<br/>23 record of our notes of what we had done in the<br/>24 committee.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>   | <p style="text-align: right;">Page 17</p> <p>1 see on the bottom right of each page, there's a<br/>2 number, and it usually begins with DEF00. Do you see<br/>3 that?</p> <p>4 A. Um-hum, yes.</p> <p>5 Q. We call that a Bates number. Lawyers<br/>6 put that there. It's just for us to identify the<br/>7 documents, the many documents that have been turned<br/>8 over in this case. But I'm looking at the page that<br/>9 is marked DEF003420.</p> <p>10 A. Yes.</p> <p>11 Q. And at the bottom of that page, it says,<br/>12 March 19th, and it begins, "Erin also e-mailed." Do<br/>13 you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it later says, "Pat agreed, but Mary<br/>16 Theresa in a series of e-mails said that she was not<br/>17 able to meet with us because she represents the<br/>18 university." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Have I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And Mary Theresa is the university's<br/>23 general counsel, correct?</p> <p>24 A. Yes.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>                               |

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| <p style="text-align: right;">Page 30</p> <p>1 A. No.<br/>     2 Q. Do you remember whether anyone else on<br/>     3 your committee took handwritten notes?<br/>     4 A. It was too long ago. I have no idea.<br/>     5 MR. COHEN: I'd like to take just a few<br/>     6 minutes' break. Okay?<br/>     7 (A recess is taken.)<br/>     8 Q. All right. Let's go back to the exhibit<br/>     9 containing Professor Fagal's initial grievance. I<br/>     10 don't know what exhibit number that is, but --<br/>     11 A. Number 1. This one?<br/>     12 Q. Yes.<br/>     13 Let's start on the page that reads<br/>     14 DEF003296. And Professor Fagal is arguing that<br/>     15 President Munley improperly suspended him, and part<br/>     16 A, he says that the -- a faculty member may be<br/>     17 suspended by the present vice for academic affairs at<br/>     18 any time during the proceedings involving him or her.<br/>     19 Do you see that?<br/>     20 A. Yes.<br/>     21 Q. And, further, he goes on that in his<br/>     22 view, the vice president of academic affairs had no<br/>     23 involvement in the suspension and that only the<br/>     24 president did. Is that right?</p>   | <p style="text-align: right;">Page 32</p> <p>1 Dr. Sadlack?<br/>     2 A. Yes.<br/>     3 Q. And is this the progressive discipline<br/>     4 policy?<br/>     5 A. Yes.<br/>     6 Q. And if you look on the last page, where<br/>     7 it says "History," the last revision, it says,<br/>     8 "October 12, 2011," correct?<br/>     9 A. Yes.<br/>     10 Q. And on the first page, the bottom of the<br/>     11 first page, there's a paragraph that starts<br/>     12 "Suspension." Do you see that in bold?<br/>     13 A. Yes.<br/>     14 Q. And it says, "The faculty member may be<br/>     15 suspended by the vice president for academic affairs<br/>     16 at any time during the proceedings involving him or<br/>     17 her." Do you see that?<br/>     18 A. Yes.<br/>     19 Q. Is there anywhere in this policy where<br/>     20 it says that the president of Marywood can be the one<br/>     21 to suspend the faculty member?<br/>     22 A. Not explicitly, but if you look at the<br/>     23 "may be suspended," it doesn't say only the vice<br/>     24 present for academic affairs.</p>  |
| <p style="text-align: center;">MAGNA LEGAL SERVICES</p> <p style="text-align: right;">Page 31</p> <p>1 A. Yes, he states that, right.<br/>     2 Q. And your committee came to the<br/>     3 conclusion that Professor Fagal was wrong about the<br/>     4 vice president for academic affairs needing to have<br/>     5 been the one to do the suspension, correct?<br/>     6 A. Correct.<br/>     7 Q. And what was your -- what was the<br/>     8 reasoning of the committee? I realize you didn't<br/>     9 tell Professor Fagal, but what was your reasoning?<br/>     10 A. The policy which is quoted here includes<br/>     11 the word "may," "may be suspended." That doesn't<br/>     12 mean only the vice president of academic affairs, and<br/>     13 we concluded it was illogical to suggest that the<br/>     14 president wouldn't be involved -- the president<br/>     15 couldn't be involved, that all power essentially does<br/>     16 go back to her.<br/>     17 Q. Do you remember whether the progressive<br/>     18 discipline policy -- well, I made that an exhibit.<br/>     19 Let's -- I think we're up to 6, correct? Let's make<br/>     20 this Sadlack-6.<br/>     21 (Sadlack-6, Marywood University<br/>     22 Progressive Discipline Policy Statement, is received<br/>     23 and marked for identification.)<br/>     24 Q. Do you recognize this document,<br/>     MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 33</p> <p>1 Q. So the school cafeteria workers, they<br/>     2 could do it, too?<br/>     3 A. That's just not logical.<br/>     4 Q. So the -- you interpreted the policy<br/>     5 based on your view of what was logical?<br/>     6 MS. PEET: Objection. You can go ahead<br/>     7 and answer.<br/>     8 A. We looked at the language of the actual<br/>     9 policy. It says "may be suspended." It does not<br/>     10 imply that this is the only person that can be<br/>     11 suspended. If you also look above that, you can have<br/>     12 people -- you know, you can start with the supervisor<br/>     13 or dean. Things move up the chain of command. It's<br/>     14 logical that they could move up the chain of command.<br/>     15 Q. So, in your view, the president was<br/>     16 authorized to conduct a suspension because she had a<br/>     17 higher -- she had higher authority than the vice<br/>     18 president?<br/>     19 A. Correct.<br/>     20 Q. Okay. So under this policy, would it be<br/>     21 your view that a member of the board or the board of<br/>     22 trustees in general, they could also do it, do a<br/>     23 suspension?<br/>     24 A. I wouldn't know. I don't know how<br/>     MAGNA LEGAL SERVICES</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 that -- I don't know enough of how that<br/>     2 relationship -- the board is an advisory body, so I<br/>     3 wouldn't see that as necessarily the same kind of<br/>     4 thing.</p> <p>5 Q. Okay. And the next sentence in the<br/>     6 suspension paragraph says, "Suspension is justified<br/>     7 if immediate harm to the faculty member or others is<br/>     8 threatened by the person's continuance in the faculty<br/>     9 position."</p> <p>10 And it's true that Professor Fagal<br/>     11 contested his suspension on this basis, too; that, to<br/>     12 his knowledge, no one had deemed him to be a threat<br/>     13 to himself or to any other faculty members, correct?<br/>     14 I'm saying, that was his argument?</p> <p>15 A. That he mentioned in his -- yes.</p> <p>16 Q. Yes.</p> <p>17 And the committee rejected that<br/>     18 argument, as well, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And what was the basis for the<br/>     21 committee's rejection of that argument?</p> <p>22 A. There are two reasons. One is that we<br/>     23 actually didn't think that "harm" did not necessarily<br/>     24 mean only physical harm; that, in fact, a harm to the<br/> <span style="text-align: right;">MAGNA LEGAL SERVICES</span></p>   | <p style="text-align: right;">Page 36</p> <p>1 rationale?<br/>     2 MS. PEET: Objection to the form.<br/>     3 THE WITNESS: Should I go ahead?<br/>     4 MS. PEET: Um-hum.</p> <p>5 A. I think that it's impossible to codify<br/>     6 all the possible reasons, but that's precisely why<br/>     7 you have a grievance committee. If a suspension is<br/>     8 unfair, then you have someone who will review it.<br/>     9 But if you try to prescribe in advance everything<br/>     10 that might possibly happen, it would be impossible to<br/>     11 do.</p> <p>12 Q. So you think that this paragraph on<br/>     13 suspension was -- couldn't be more clear about the<br/>     14 grounds for suspension than it already is?</p> <p>15 MS. PEET: Objection to the form. You<br/>     16 can answer.</p> <p>17 A. I think that there are -- I think<br/>     18 policies can always be a little clearer, you know,<br/>     19 but in this particular case, this was one possible --<br/>     20 and that was the judgment of our entire committee.</p> <p>21 Q. So in your view, the role of your<br/>     22 committee was -- let me ask you this: In your view,<br/>     23 was the role of the committee to adjudicate<br/>     24 procedural grievances or substantive grievances or<br/> <span style="text-align: right;">MAGNA LEGAL SERVICES</span></p> |
| <p style="text-align: right;">Page 35</p> <p>1 university community had happened. We thought that<br/>     2 in particular, by characterizing Dr. Levine, a member<br/>     3 that everyone knows is Jewish, a member of the<br/>     4 committee, as a Nazi, causes -- that's a form of<br/>     5 harassment that causes harm. The fact that the<br/>     6 videos were public meant that there was also damage<br/>     7 to the university's public reputation. However, we<br/>     8 also, for the second reason -- that's not the only<br/>     9 reason why suspension may be justified. That is one<br/>     10 possible reason, but that's not the only reason why<br/>     11 someone might be suspended.</p> <p>12 Q. So --</p> <p>13 A. That's not a laundry list. That's just<br/>     14 one instance of what could merit suspension.</p> <p>15 Q. So, in your view, the university could<br/>     16 simply -- assuming a suspension was not justified by<br/>     17 immediate harm, however that's defined, the<br/>     18 administration could find another rationale to<br/>     19 suspend someone other than immediate harm?</p> <p>20 MS. PEET: Object to the form. You can<br/>     21 answer.</p> <p>22 A. Yes.</p> <p>23 Q. And your view is that it's just left<br/>     24 open-ended and the university could simply choose a<br/> <span style="text-align: right;">MAGNA LEGAL SERVICES</span></p> | <p style="text-align: right;">Page 37</p> <p>1 both?<br/>     2 A. In this particular instance, our role<br/>     3 was procedural, were these particular procedures<br/>     4 violated unreasonably.</p> <p>5 Q. Okay. That being said, you also<br/>     6 determined, correct me if I'm wrong, that Professor<br/>     7 Fagal's suspension was justified?</p> <p>8 A. There -- Professor Fagal would have the<br/>     9 right to appeal the actual judgment of what had<br/>     10 happened. That would be a separate committee that<br/>     11 would review that particular one. What we ruled on<br/>     12 were the different specific violations that he<br/>     13 alleged procedurally.</p> <p>14 Q. Now, your view that suspension under<br/>     15 this progressive discipline policy could be justified<br/>     16 by immediate harm that wasn't necessarily physical,<br/>     17 that was your view, correct?</p> <p>18 A. Correct.</p> <p>19 Q. What other types of immediate harm in<br/>     20 your view could the policy cover?</p> <p>21 MS. PEET: Objection. Already asked and<br/>     22 answered, but if you have any more you want to add to<br/>     23 that.</p> <p>24 A. I don't know -- what you're asking me to<br/> <span style="text-align: right;">MAGNA LEGAL SERVICES</span></p>  |

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| <p style="text-align: right;">Page 38</p> <p>1 do is far beyond what we ever discussed. We were<br/>2 looking at the specifics of this particular case.<br/>3 Q. And your judgment was that what<br/>4 Professor Fagal did constituted immediate harm?<br/>5 A. Well, that's not -- that's not what --<br/>6 that there was some -- that there was a right for him<br/>7 to have been suspended is what we had decided.<br/>8 Q. That there was a right for him to be<br/>9 suspended?<br/>10 A. I'm sorry, that -- that caused to. That<br/>11 he was improperly suspended because he has not been a<br/>12 cause of immediate harm to yourself or others, we<br/>13 thought that there were no grounds for that<br/>14 particular complaint.<br/>15 Q. Yes, I understand that. And was it your<br/>16 testimony today that Dr. Fagal's specific argument<br/>17 that his suspension was not grounded in immediate<br/>18 harm had no merit but that he could -- he was free to<br/>19 appeal that suspension? Or is that --<br/>20 A. Correct, that he could convene an ad hoc<br/>21 committee to review the actual substance.<br/>22 Q. Okay. Let's move back to the first<br/>23 exhibit, which was Professor Fagal's grievance, and<br/>24 I'm on the page where it says DEF003296 at the bottom</p> | <p style="text-align: right;">Page 40</p> <p>1 dismissal of the faculty member." Did I read that<br/>2 correctly?<br/>3 A. Yes.<br/>4 Q. And so the view of the committee was<br/>5 that essentially it was -- it was okay for the<br/>6 president to move directly to termination even though<br/>7 there were no remedial actions taken?<br/>8 A. It was our unanimous view, if you look<br/>9 at the opening of the progressive discipline policy,<br/>10 the statement -- the third statement in there that<br/>11 the university -- "the policy recognizes professional<br/>12 and personal" -- "personal and professional problems<br/>13 that may be rectified by informal educational<br/>14 process, as well as serious violations of<br/>15 professional responsibilities." That language,<br/>16 again, suggests that remedial action is not<br/>17 appropriate in every instance.<br/>18 Q. So that initial prefatory language that<br/>19 you just read, that indicates to you that progressive<br/>20 discipline is optional in some cases but that the<br/>21 university could just immediately move to suspension<br/>22 or termination?<br/>23 MS. PEET: Objection to form.<br/>24 Q. In some circumstances, correct?</p> |
| <p style="text-align: right;">Page 39</p> <p>1 right. Paragraph 2, it begins, "President Munley<br/>2 improperly moved to terminate my employment and<br/>3 tenure." Do you see that?<br/>4 A. Yes.<br/>5 Q. And, here, Professor Fagal is<br/>6 essentially arguing that he was terminated<br/>7 prematurely. I'm not asking you to agree with it.<br/>8 I'm asking you whether that's what he's arguing: He<br/>9 was terminated prematurely and there were no remedial<br/>10 actions taken during his suspension that could have<br/>11 led to -- that could have led to termination.<br/>12 MS. PEET: Objection, lack of<br/>13 foundation. She can't possibly know what was in his<br/>14 mind, but she can know what she interpreted it to be.<br/>15 Q. I'm asking for your interpretation.<br/>16 A. Yes, that's my understanding.<br/>17 Q. And if we go back to the progressive<br/>18 discipline policy, on the second page -- second page,<br/>19 you see the paragraph that says "Dismissal"?</p>  | <p style="text-align: right;">Page 41</p> <p>1 A. It was the view of our entire committee<br/>2 that there is leeway in that policy.<br/>3 Q. So the language under "Dismissal" where<br/>4 it says, "If remedial actions taken during the<br/>5 suspension does not sufficiently resolve the issues<br/>6 that lead to the suspension, the university may move<br/>7 towards dismissal of the faculty member," that's<br/>8 just -- did you just ignore that language?<br/>9 MS. PEET: Objection to the form.<br/>10 A. No, it's -- again, you cannot isolate<br/>11 one part of the policy from another part of the<br/>12 policy.<br/>13 Q. Isn't that what you did, though?<br/>14 A. No, we looked at -- there are cases<br/>15 where -- there are times when you can have<br/>16 progressive discipline and there are times where it's<br/>17 not guaranteed.<br/>18 Q. And who decides that?<br/>19 A. The decision maker. The role of the<br/>20 grievance committee is to give a decision maker<br/>21 advice on their decision if they feel that there is a<br/>22 problem. We did not feel in this particular case<br/>23 that there was a problem that merited reconsideration<br/>24 by the decision maker.</p>               |

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| <p style="text-align: right;">Page 42</p> <p>1 Q. Okay. So in your view, there were no<br/>2 remedial actions taken by the university prior to<br/>3 Professor Fagal's termination but that that was okay,<br/>4 correct?</p> <p>5 MS. PEET: Objection to the form.</p> <p>6 A. Correct. As I said before, we did not<br/>7 understand what possible remediation there could be.</p> <p>8 Q. So how did you come to that conclusion<br/>9 that there was no possible remediation? Did you --<br/>10 can you predict the future?</p> <p>11 MS. PEET: Objection to the form.</p> <p>12 A. We certainly discussed, you know, this<br/>13 whole matter at length, and as I said before, we knew<br/>14 that Professor Fagal was very familiar with the core<br/>15 values, that there's not a case of -- that he could<br/>16 claim that he was ignorant of what he was doing. We<br/>17 saw no remorse in his letter to the grievance<br/>18 committee, and we knew that he had been present at<br/>19 harassment training, so we're not -- we could not<br/>20 have envisioned a further one. That doesn't mean<br/>21 there aren't possible other things, but we did not<br/>22 see anything possible that we could come up with.</p> <p>23 Q. And you testified earlier that you did<br/>24 meet with Dr. Dunleavy as part of your committee</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 44</p> <p>1 A. Yes.<br/>2 Q. Okay. But you also relied on several --<br/>3 on a set of written notes from Dr. Dunleavy, correct,<br/>4 about what had occurred at the meeting between<br/>5 Dr. Fagal, the president, Dr. Dunleavy?<br/>6 MS. PEET: Objection to the form.<br/>7 Q. You did rely on that?<br/>8 A. That was part of it.<br/>9 Q. Do you remember what other materials,<br/>10 written materials, you considered as part of your<br/>11 deliberations?<br/>12 A. We were given a packet of -- it had the<br/>13 different policies included, it had Professor Fagal's<br/>14 e-mails, and then his -- and his grievance.<br/>15 Q. Do you remember --<br/>16 A. I can't recall -- there may have been<br/>17 others, but that's -- I think -- I cannot remember --<br/>18 we had some kind of access to the videos, screen<br/>19 shots or transcripts or something. I don't remember.<br/>20 Maybe it might have been the actual videos<br/>21 themselves. I don't recall.<br/>22 Q. So coming back to the first exhibit,<br/>23 Professor Fagal's grievance, and we're still on the<br/>24 second page, at the bottom, Dr. Fagal had argued that</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>   |
| <p style="text-align: right;">Page 43</p> <p>1 deliberations.<br/>2 A. Correct.<br/>3 May I correct that?<br/>4 Q. Sure.<br/>5 A. Not as part of our deliberations but<br/>6 just general fact seeking about policy and things<br/>7 like that.<br/>8 Q. And Dr. Dunleavy was head of Marywood's<br/>9 human resources department, correct?<br/>10 A. Correct.<br/>11 Q. Do you remember asking Dr. Dunleavy what<br/>12 forms of remediation are sometimes offered to<br/>13 disciplined employees of the university?<br/>14 A. I don't remember.<br/>15 Q. But you do remember deciding on your own<br/>16 that no possible remediation was warranted in<br/>17 Professor Fagal's case, correct?<br/>18 A. Not that it wasn't -- we certainly<br/>19 didn't feel that there were grounds for overturning<br/>20 what he was asking us to overturn.<br/>21 Q. Okay. And you didn't interview<br/>22 Dr. Fagal, correct?<br/>23 A. No, we relied on his statement.<br/>24 Q. On just his grievance statement?</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>  | <p style="text-align: right;">Page 45</p> <p>1 his request to convene a committee to appeal his<br/>2 suspension had not been accepted. And he quoted the<br/>3 progressive discipline policy stating that it could<br/>4 be convened twice, once for suspension and once for<br/>5 dismissal, and that that had not occurred. And I'm<br/>6 not asking you to agree with what he's saying, but<br/>7 that's your interpretation of what he's arguing,<br/>8 correct?<br/>9 A. Yes.<br/>10 Q. And ultimately you ruled that that<br/>11 argument had no merit, either, correct?<br/>12 A. Correct.<br/>13 Q. And what was your reasoning for that?<br/>14 A. I have to look back in here.<br/>15 Again, it came back to the logic of what<br/>16 was happening here. We found that the policy doesn't<br/>17 guarantee that series of steps, but rather it's a<br/>18 possibility wherever remediation is warranted; and in<br/>19 particular, we had noted that if you got a<br/>20 recommendation for either suspension or dismissal,<br/>21 you would have the right to have a committee consider<br/>22 the matter, but, again, we didn't think it was<br/>23 logical or even a use of resources -- why would you<br/>24 have a different committee look at the exact same</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 circumstances? That just didn't make sense either.<br/>     2 We thought it was very important that Professor Fagal<br/>     3 have a committee to review the substance of the<br/>     4 matter. We absolutely believed that he was entitled<br/>     5 to that, but we didn't see it as the suspension --<br/>     6 you know, appeal the suspension and appeal the<br/>     7 termination, that those were connected. There was no<br/>     8 reason for those to be separate.</p> <p>9 Q. Okay. So to be clear, you did believe<br/>     10 that Professor Fagal had a right to appeal his<br/>     11 suspension, just not as a separate -- just not have<br/>     12 two separate committees, one for suspension and one<br/>     13 for termination. Is that what you're saying?</p> <p>14 A. We believed he had the right to a<br/>     15 committee that's going to review the entire matter.</p> <p>16 Q. Okay. Coming back to the progressive<br/>     17 discipline policy. I think that's Sadlack Exhibit 6.<br/>     18 Am I right about that, Exhibit 6?</p> <p>19 A. Yes.</p> <p>20 Q. If you look on page 2, do you see where<br/>     21 it says "Ad Hoc Faculty Committee" in bold?</p> <p>22 A. Um-hum. Yes.</p> <p>23 Q. And at the very bottom of the page, it<br/>     24 says, "Should a faculty member request that such a</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>                           | <p style="text-align: right;">Page 48</p> <p>1 not necessarily to have a separate committee,<br/>     2 separate from the committee reviewing his<br/>     3 termination, review his suspension, as well, correct?<br/>     4 MS. PEET: Objection to form. Lack of<br/>     5 foundation.</p> <p>6 A. I have to rely on what our notes were.<br/>     7 I don't remember -- this is so many years ago, but<br/>     8 what we had said here was, in particular, that the<br/>     9 language is that if you get a recommendation for<br/>     10 either suspension or dismissal, you then send that<br/>     11 written communication stating with reasonable<br/>     12 particularity to convene the committee to consider<br/>     13 the matter. Whatever decision is reached, that<br/>     14 decision may be appealed. That's what we thought.<br/>     15 We thought that was a reasonable interpretation.</p> <p>16 Q. And you thought that it wouldn't be<br/>     17 logical for Professor Fagal to have two separate<br/>     18 committees, one to review his suspension, one to<br/>     19 review his termination?</p> <p>20 MS. PEET: Are we talking about an ad<br/>     21 hoc committee or a faculty grievance committee?</p> <p>22 MR. COHEN: Ad hoc.</p> <p>23 MS. PEET: Lack of foundation.</p> <p>24 A. They -- that is correct. There's</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> |
| <p style="text-align: right;">Page 47</p> <p>1 committee be convened twice," in parentheses, "i.e.,<br/>     2 once for suspension and once for dismissal, the<br/>     3 membership of the committee may be similar." Do you<br/>     4 see that sentence?</p> <p>5 A. Yes.</p> <p>6 Q. So, in essence, did you ignore that<br/>     7 statement in coming to the conclusion that Professor<br/>     8 Fagal was not entitled to a separate committee to<br/>     9 review his suspension?</p> <p>10 MS. PEET: Objection to the form.</p> <p>11 A. No. Again, there's -- this is not an<br/>     12 absolute. There is an element -- there is this<br/>     13 element of should the committee -- if you look at the<br/>     14 very beginning of that, "Should the faculty member<br/>     15 request a review by the ad hoc committee," at that<br/>     16 point, that was a separate committee that would have<br/>     17 then -- would have to then be convened. And if you<br/>     18 look at the very beginning, "You have the right to<br/>     19 convene the ad hoc committee to appeal the decision<br/>     20 or the decision to dismiss," so he has the right --<br/>     21 so dealing with that together made sense.</p> <p>22 Q. I don't understand. So your view was<br/>     23 that a professor in Dr. Fagal's position had a right<br/>     24 to appeal his suspension but not necessarily that --</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 49</p> <p>1 nothing that it would be illogical. It would be the<br/>     2 exact same matter under consideration, so it would<br/>     3 just be an instance of the entire substance of<br/>     4 everything was exactly the same, nothing would have<br/>     5 changed in between them, so that that wasn't logical.</p> <p>6 Q. So your interpretation of what was<br/>     7 logical could sometimes override what the policy<br/>     8 states?</p> <p>9 MS. PEET: Objection to the form,<br/>     10 mischaracterization of testimony and complete lack of<br/>     11 foundation.</p> <p>12 A. Again, it is our job as the committee to<br/>     13 determine what we think -- you know, what is --<br/>     14 that's exactly what Professor Fagal was asking us to<br/>     15 do, was to look and see had he been treated fairly,<br/>     16 and we felt unanimously that he was.</p> <p>17 Q. Your view was that Dr. Fagal was asking<br/>     18 you to see if he was treated fairly or whether he was<br/>     19 treated according to the actual policy?</p> <p>20 A. None of the grounds of his complaint<br/>     21 were justified.</p> <p>22 Q. I don't understand.</p> <p>23 A. He asked us to look into several<br/>     24 specific things and that we found that none of those</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>                       |

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|--|--|
| <p style="text-align: right;">Page 50</p> <p>1 complaints were grounded in what was reasonable<br/>2 according to the language of the policy and our own<br/>3 logic.</p> <p>4 Q. Coming back to Professor Fagal's<br/>5 grievance. Again, we're on the second page, and<br/>6 paragraph 2, it says, "President Munley improperly<br/>7 moved to terminate my employment and tenure." Do you<br/>8 see that?</p> <p>9 A. Yes.</p> <p>10 Q. Part B, Professor Fagal argues that only<br/>11 a vice president could recommend dismissal, and he<br/>12 quotes from the progressive discipline policy,<br/>13 "Having received a written recommendation for either<br/>14 suspension or dismissal from the vice president for<br/>15 academic affairs." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And you determined that he was --<br/>18 Professor Fagal was wrong about that, too?</p> <p>19 A. We applied the same logic that we had in<br/>20 the earlier instance, that the authority ultimately<br/>21 stems from the president; and, again, the language<br/>22 was ambiguous to -- where it says "may," it<br/>23 doesn't -- it's not ambiguous, but it doesn't<br/>24 allow -- it doesn't suggest that the president</p> <p style="text-align: right;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 52</p> <p>1 A. Yes.<br/>2 Q. And everyone on the committee was also<br/>3 tenured?<br/>4 A. Correct.<br/>5 Q. While you were serving on this faculty<br/>6 grievance committee, did you feel any pressure to<br/>7 rule in one way or the other?<br/>8 A. Absolutely not, only the pressure to do<br/>9 right by everyone.<br/>10 Q. Okay. At some point do you remember<br/>11 being contacted by members of an ad hoc committee<br/>12 regarding what exactly the faculty grievance<br/>13 committee did with regard to Professor Fagal?<br/>14 A. Yes.<br/>15 Q. And who contacted you?<br/>16 A. Dr. Helen Bittel.<br/>17 Q. And ultimately did you actually meet<br/>18 with the ad hoc committee?<br/>19 A. I did.<br/>20 Q. And do you remember what questions were<br/>21 asked of you?<br/>22 A. Not in detail. We were trying to sort<br/>23 out the purview of each committee. We had looked at<br/>24 the procedural elements, and they were looking at the</p> <p style="text-align: right;">MAGNA LEGAL SERVICES</p>  |
| <p style="text-align: right;">Page 51</p> <p>1 cannot.<br/>2 Q. Let's turn back to the progressive<br/>3 discipline policy, then. Again, page 2, do you see<br/>4 where it says "Ad Hoc Faculty Committee"?</p> <p>5 A. Yes.<br/>6 Q. And the first bullet point says, "Having<br/>7 received a written recommendation for either<br/>8 suspension or dismissal." This is the language that<br/>9 Professor Fagal was quoting, correct?</p> <p>10 A. Yes.<br/>11 Q. Where does it say "may" here?<br/>12 A. Again, we had gone back to the earlier<br/>13 suspension, that this may be and, again, applying the<br/>14 same kind of logic all the way through. The<br/>15 president is ultimately the one who has say over all<br/>16 the faculty. She is the one who ultimately rules on<br/>17 faculty tenure. All of these policies, she's<br/>18 ultimately our boss, so to suggest that she is not --<br/>19 that it should only come from someone who's below her<br/>20 is illogical.<br/>21 Q. At the time that you were -- that you<br/>22 served on the faculty grievance committee for<br/>23 Professor Fagal's particular grievance, at that time<br/>24 were you a tenured professor?</p> <p style="text-align: right;">MAGNA LEGAL SERVICES</p>                                | <p style="text-align: right;">Page 53</p> <p>1 substantive. So we were just clarifying it.<br/>2 Q. When you say clarifying it, you were<br/>3 looking into -- you mean the faculty grievance<br/>4 committee was considering the procedural aspects of<br/>5 Professor Fagal's discipline; the ad hoc faculty<br/>6 committee was just reviewing it substantively?<br/>7 A. Yes.<br/>8 Q. And how did you reach that conclusion,<br/>9 that the ad hoc faculty committee should not consider<br/>10 procedure?<br/>11 A. Because the actions of the grievance<br/>12 committee cannot be grieved. It doesn't make sense<br/>13 to have an entire group of faculty then rereview<br/>14 everything that had been already filed.<br/>15 Q. And in reaching that conclusion, you<br/>16 were just relying on common sense?<br/>17 A. And the language of the policy that says<br/>18 the actions of the grievance committee cannot<br/>19 themselves be grieved.<br/>20 Q. Do you know whether any of the language<br/>21 regarding the ad hoc faculty committee says that they<br/>22 can't also consider procedure?<br/>23 A. That was not my committee.<br/>24 Q. But, nonetheless, you advised the ad hoc</p> <p style="text-align: right;">MAGNA LEGAL SERVICES</p> |

|   |  |
|---|--|
| <p style="text-align: right;">Page 54</p> <p>1 faculty committee that they should just consider<br/>2 substance?</p> <p>3 MS. PEET: Objection,<br/>4 mischaracterization of testimony. You can answer.</p> <p>5 A. That was our overall consensus.</p> <p>6 Q. So let me ask this: If a professor does<br/>7 not file a faculty grievance and just moved straight<br/>8 to an ad hoc faculty committee, is it your view that<br/>9 he has kind of waived any procedural arguments?</p> <p>10 A. You would not actually -- you would<br/>11 always start with the faculty grievance committee.</p> <p>12 Q. Really?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. The language of the progressive<br/>15 discipline policy, did you find it to be vague in any<br/>16 way, or ambiguous?</p> <p>17 A. There were -- as we first looked at it,<br/>18 in particular, it looked like a series of steps that<br/>19 all had to be taken. We just had to sort out that<br/>20 aspect of things.</p> <p>21 Q. So at first --</p> <p>22 A. When we first read through the policy,<br/>23 it was you could do this, you could do this, you<br/>24 could do that. We didn't have to do all of those</p> | <p style="text-align: right;">Page 56</p> <p>1 about how you were selected as chairman of the<br/>2 committee and you talked about the fact that no one<br/>3 took it too seriously, I just want to make sure it's<br/>4 clear on the record. You weren't talking about the<br/>5 fact that you weren't taking the committee seriously,<br/>6 correct?</p> <p>7 A. No. In fact, honestly, all of us -- I<br/>8 remember us talking about that. We felt we had been<br/>9 honored by being elected by our fellow faculty<br/>10 members to serve in this role, that they trusted us<br/>11 with that. No, it was purely just the role of being<br/>12 chair sounds very prestigious, but what it actually<br/>13 tends to be is paperwork, and so no one thinks of<br/>14 that as anything more than just an onerous duty.</p> <p>15 Q. And that comment was specifically about<br/>16 the chair position, correct?</p> <p>17 A. Right. Not the committee, absolutely<br/>18 not, right.</p> <p>19 MS. PEET: That's all I have.<br/>20 (Whereupon, at 11:10 a.m., the<br/>21 deposition of Erin Ann Sadlack concluded.)</p> |
| <p style="text-align: center;">MAGNA LEGAL SERVICES</p> <p style="text-align: right;">Page 55</p> <p>1 particular steps.</p> <p>2 Q. Okay.</p> <p>3 A. But that was easily clarified.</p> <p>4 MS. PEET: Could we take a quick break?</p> <p>5 MR. COHEN: Sure.</p> <p>6 (A recess is taken.)</p> <p>7 Q. After your faculty grievance committee<br/>8 ruled in Professor Fagal's case, do you remember<br/>9 discussing your deliberations after the fact with<br/>10 anyone other than attorneys in this case?</p> <p>11 A. No. Our deliberations, no.</p> <p>12 Q. Not the president?</p> <p>13 A. No.</p> <p>14 Q. Nobody else?</p> <p>15 A. No one.</p> <p>16 MR. COHEN: Okay. I think I'm finished.</p> <p>17 MS. PEET: Can I just ask --</p> <p>18 MR. COHEN: Sure.</p> <p>19 CROSS-EXAMINATION BY MS. PEET:</p> <p>20 Q. I believe all of us in the room,<br/>21 Dr. Sadlack, understood what you meant earlier, but<br/>22 I'm not quite sure it's going to come clear on the<br/>23 record, so I just want to ask clarification.</p> <p>24 When Mr. Cohen was asking you earlier</p>  | <p style="text-align: center;">MAGNA LEGAL SERVICES</p> <p style="text-align: right;">Page 57</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I HEREBY CERTIFY that the witness was<br/>4 duly sworn by me and that the deposition is a<br/>5 true record of the testimony given by the<br/>6 witness.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Judy A. Black<br/>11 Registered Professional Reporter<br/>12 Dated: July 13, 2016</p> <p>13</p> <p>14</p> <p>15</p> <p>16 (The foregoing certification of this<br/>17 transcript does not apply to any reproduction of<br/>18 the same by any means, unless under the direct<br/>19 control and/or supervision of the certifying<br/>20 reporter.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>  |

# EXHIBIT P

Marywood University Gmail Mail - Notice of Grievance Committee's... https://mail.google.com/mail/u/0/?ui=2&lk=2397c2af47&view=pt&q...



Erin Sadlack <easadlack@maryu.marywood.edu>

## Notice of Grievance Committee's receipt of materials

3 messages

Dr Erin A Sadlack <easadlack@maryu.marywood.edu>

Mon, Mar 19, 2012 at 5:52 PM

To: fffagal@yahoo.com

Bcc: Dr William P Conlogue <conlogue@maryu.marywood.edu>, Dr Patricia Sullivan Arter <psarter@maryu.marywood.edu>

Dear Fred,

This email is just to inform you that the Faculty Grievance Committee has received your official grievance regarding your suspension and termination and to tell you that we have begun the process of reviewing your arguments. If there is any additional information you would like us to consider, please let me know. Otherwise we will be in touch when we have our findings ready.

Sincerely,  
Erin

---

Erin A. Sadlack, Ph.D.  
Associate Professor, English Department  
Honors Program Director  
Marywood University  
2300 Adams Avenue  
Scranton, PA 18509  
570-348-6211, x2344

---

Frederick Fagal <fffagal@yahoo.com>

Mon, Mar 19, 2012 at 10:10 PM

Reply-To: Frederick Fagal <fffagal@yahoo.com>

To: Dr Erin A Sadlack <easadlack@maryu.marywood.edu>

Hello Erin,

Thanks for keeping me informed. I am suspended (I am surely not teaching) but at this point/stage President Munley has only **recommended** my termination. I can think of nothing more you and the others should know at the moment, but will let you know if something comes up.

Sincerely,

Fred

Frederick F. Fagal, Jr., Ph.D.

Associate Professor of Economics, Social Science Department

Marywood University

2300 Adams Avenue

Scranton, PA 18509



Marywood University Gmail Mail - Notice of Grievance Committee's... <https://mail.google.com/mail/u/0/?ui=2&ik=2397c2af47&view=pt&q...>

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**From:** Dr Erin A Sadlack <easadlack@maryu.marywood.edu>  
**To:** fffagal@yahoo.com  
**Sent:** Monday, March 19, 2012 5:52 PM  
**Subject:** Notice of Grievance Committee's receipt of materials  
[Quoted text hidden]

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Dr Erin A Sadlack <easadlack@maryu.marywood.edu>  
To: Dr William P Conlogue <conlogue@maryu.marywood.edu>, Dr Patricia Sullivan Arter  
<psarter@maryu.marywood.edu>

Wed, Mar 21, 2012 at 8:02 PM

Here is Fred's response.

[Quoted text hidden]

[Quoted text hidden]

# EXHIBIT Q



**Marywood**  
UNIVERSITY

COLLEGE OF LIBERAL ARTS AND SCIENCES

MARYWOOD UNIVERSITY  
SCRANTON, PA 18509-1598  
TEL: (570) 348-6219  
[www.marywood.edu/english](http://www.marywood.edu/english)

DEPARTMENT OF ENGLISH

Dr. Frederick Fagal  
17 East Lake Street  
Skaneateles, NY, 13152

Sent via email to [ffagaf@yahoo.com](mailto:ffagaf@yahoo.com), as well as regular mail.

March 26, 2012

Dear Dr. Fagal,

As Chair of the Faculty Grievance Committee, I write to inform you that the committee has reviewed thoroughly your grievance about your recent suspension and recommendation for termination of employment and tenure, namely, your arguments:

1. That you were improperly suspended by President Munley; the action should have originated with Dr. Levine.
2. That you were improperly suspended because you have not been a cause of immediate harm to yourself or to others.
3. That President Munley moved improperly to terminate your employment and tenure because you should have had a chance for remediation.
4. That President Munley moved improperly to terminate your employment and tenure because only the Vice President can take such action.
5. That you have not had an opportunity to convene an ad hoc committee to appeal the suspension.

I now write to inform you that in reviewing each of these grievances, we have found no evidence of improper action on President Munley's part which would constitute a legitimate grievance.

I will notify President Munley of the decision as well.

Sincerely,

Erin A. Sadlack, Ph.D.  
Chair, Faculty Grievance Committee

cc: Sr. Gail Cabral, IHM, Ph.D., Faculty Senate President

*An education inspired by the Sisters, Servants of the Immaculate Heart of Mary*



# EXHIBIT R

Marywood University Gmail Mail - Regarding: Ad Hoc Faculty Com... <https://mail.google.com/mail/?ui=2&ik=d0aae8ec1c&view=pt&search=>

Sr Anne Munley <annemunley@maryu.marywood.edu>

**Regarding: Ad Hoc Faculty Committee**

1 message

**Frederick Fagal <fffagaf@yahoo.com>**

Thu, Mar 29, 2012 at 10:01 AM

Reply-To: Frederick Fagal <fffagaf@yahoo.com>

To: "annemunley@marywood.edu" <annemunley@marywood.edu>

17 East Lake Street  
Skaneateles, NY 13152

March 29, 2012

Via E-Mail & USPS First-Class Mail

President Anne Munley, IHM  
2300 Adams Avenue  
Marywood University  
Scranton, Pennsylvania 18509

Re: Ad Hoc Faculty Committee

Dear President Munley:

Yesterday I received a letter from Dr. Erin A. Sadlack stating that the Faculty Grievance Committee “found no evidence of improper action on [your] part which would constitute a legitimate grievance.” I strongly disagree with that Committee’s “finding.” In any case, I am again exercising my right under Marywood University’s Progressive Discipline policy to convene an ad hoc committee to appeal your suspension of me as well as your recommendation to terminate my employment and tenure.

I grant permission for Marywood University to release your “Recommendation for Termination and Statement of Charges” dated February 8, 2012 to an ad hoc committee in order to appeal your decision to suspend me as well as your recommendation to terminate my employment and tenure. To be clear, I am requesting that the ad hoc committee be convened twice—once to appeal my suspension and once to appeal your recommendation to terminate my employment and tenure.

If you have any questions, please do not hesitate to contact me or my attorney, Jonathan Z. Cohen.

Sincerely,

Frederick F. Fagal, Jr.



17 East Lake Street  
Skaneateles, NY 13152

March 29, 2012

Via E-Mail & USPS First-Class Mail

President Anne Munley, IHM  
2300 Adams Avenue  
Marywood University  
Scranton, Pennsylvania 18509

Re: Ad Hoc Faculty Committee

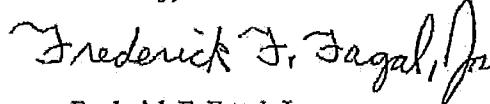
Dear President Munley:

Yesterday I received a letter from Dr. Erin A. Sadlack stating that the Faculty Grievance Committee "found no evidence of improper action on [your] part which would constitute a legitimate grievance." I strongly disagree with that Committee's "finding." In any case, I am again exercising my right under Marywood University's Progressive Discipline policy to convene an ad hoc committee to appeal your suspension of me as well as your recommendation to terminate my employment and tenure.

I grant permission for Marywood University to release your "Recommendation for Termination and Statement of Charges" dated February 8, 2012 to an ad hoc committee in order to appeal your decision to suspend me as well as your recommendation to terminate my employment and tenure. To be clear, I am requesting that the ad hoc committee be convened twice—once to appeal my suspension and once to appeal your recommendation to terminate my employment and tenure.

If you have any questions, please do not hesitate to contact me or my attorney, Jonathan Z. Cohen.

Sincerely,



Frederick F. Fagal, Jr.

cc: Jonathan Z. Cohen, Esquire

# EXHIBIT S



# Marywood UNIVERSITY

OFFICE OF THE PRESIDENT

MARYWOOD UNIVERSITY  
SCRANTON, PA 18509-1598  
TEL: (570) 348-6231  
FAX: (570) 340-6014  
EMAIL: ANNEMUNLEY@MARYWOOD.EDU  
WWW.marywood.edu

April 3, 2012

Dr. Frederick F. Fagal, Jr.  
17 East Lake Street  
Skaneateles, NY 13152

Dear Dr. Fagal,

I have received your letter dated March 29, 2012. You chose to file a grievance under the Marywood University Faculty Grievance and Appeals Policy and chose not to convene an ad hoc committee to review my recommendation as I had offered to you on two occasions. The Faculty Grievance Committee reviewed your grievance and found no evidence of improper action on my part which would constitute a legitimate grievance.

Since the grievance process is now complete, I have decided to finalize my recommendation. As a result, your employment with Marywood and your tenure are terminated effective today, April 3, 2012.

Further, to provide you with a review of my decision, I will consider your letter dated March 29, 2012 as your authorization for me to convene two faculty ad hoc committees to appeal my decisions to suspend you and to terminate your employment and tenure. I am doing this despite the fact that on two separate occasions you refused my offer and did not choose to convene an ad hoc committee to review my decision to suspend you and my recommendation to terminate your employment and tenure before I finalized my decision.

According to the terms of the Progressive Discipline Policy, you must now select a tenured faculty member for the ad hoc committee. Please submit the name of your selection to Sr. Gall Cabral, President of the Faculty Senate, as soon as possible.

Sincerely,

*Sister Anne Munley, IHM*

Sister Anne Munley, IHM  
President



An education inspired by the Sisters, Servants of the Immaculate Heart of Mary.

# EXHIBIT T

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL, JR. ) CIVIL ACTION  
 )  
Plaintiff )  
 )  
v. ) No.: 3:14-cv-02404-ARC  
 )  
MARYWOOD UNIVERSITY, )  
 ) JUDGE CAPUTO  
Defendant )  
 - - -

Deposition of Helen Bittel, Ph.D.

Thursday, September 29, 2016

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The deposition of Helen Bittel, Ph.D., called as a witness by the Plaintiff, pursuant to notice and the Pennsylvania Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Christine A. Messner, a Notary Public in and for the Commonwealth of Pennsylvania, at 700 Lackawanna Avenue, Scranton, Pennsylvania 18503, commencing at 10:04 a.m., the day and date above set forth.

-----

MAGNA LEGAL SERVICES  
Seven Penn Center  
1635 Market Street, 8th Floor  
Philadelphia, Pennsylvania 19103

[www.MagnaLS.com](http://www.MagnaLS.com)

866-624-6221

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| <p style="text-align: right;">Page 6</p> <p>1 professor.</p> <p>2 Q Are you tenured?</p> <p>3 A I am tenured.</p> <p>4 Q Okay. Have you ever met my client Professor</p> <p>5 Fagal before?</p> <p>6 A Yes, I have.</p> <p>7 Q And when did you first meet him?</p> <p>8 A Sometime in my early years at Marywood, no</p> <p>9 particular date comes to mind. We worked in the same</p> <p>10 building, so we go downstairs to get a cup of coffee.</p> <p>11 Q At some point in 2012 you participated in a</p> <p>12 committee regarding certain disciplinary measures that</p> <p>13 the administration was trying to bring against my</p> <p>14 client, correct?</p> <p>15 A Correct.</p> <p>16 Q And before that --</p> <p>17 A Okay.</p> <p>18 Q -- what were your general impressions of</p> <p>19 Professor Fagal?</p> <p>20 MS. PEET: Objection to the form. You can</p> <p>21 answer.</p> <p>22 BY MR. COHEN:</p> <p>23 Q So unless your attorney objects and instructs</p> <p>24 you not to answer, you have to try to answer, but --</p>                          | <p style="text-align: right;">Page 8</p> <p>1 discussions you and I had --</p> <p>2 THE WITNESS: Right.</p> <p>3 MS. PEET: -- at any point.</p> <p>4 THE WITNESS: That's our privilege.</p> <p>5 MS. PEET: That would be specific to the</p> <p>6 attorney/client privilege, that's correct.</p> <p>7 BY MR. COHEN:</p> <p>8 Q Do you remember what documents you did review in</p> <p>9 preparation for this?</p> <p>10 A E-mail exchanges between members of my</p> <p>11 committee, drafts of the statement we ultimately</p> <p>12 prepared, other general e-mails we presented along the</p> <p>13 way including Doctor Fagal's statement and request for</p> <p>14 appeal. We did receive the findings of the Faculty</p> <p>15 Grievance Committee who adjudicated the procedural</p> <p>16 aspects.</p> <p>17 Q So eventually in 2012 you did serve on what's</p> <p>18 called an Ad Hoc Faculty Committee?</p> <p>19 A That is correct.</p> <p>20 Q What was, in your own words, what was the</p> <p>21 purpose of that committee?</p> <p>22 A We were convened following the meeting --</p> <p>23 following the meeting of the Faculty Grievance</p> <p>24 Committee. The Faculty Grievance Committee functions</p>  |
| <p style="text-align: right;">Page 7</p> <p>1 and also after I ask a question, you might want to give</p> <p>2 your attorney like a few seconds so that she can</p> <p>3 interpose an objection.</p> <p>4 MS. PEET: Thanks, Mr. Cohen.</p> <p>5 MR. COHEN: I'm sorry. It's useful advice,</p> <p>6 right?</p> <p>7 MS. PEET: Yeah.</p> <p>8 BY MR. COHEN:</p> <p>9 Q Do you need me to rephrase the question?</p> <p>10 A I had no strong opinions either way.</p> <p>11 Q Okay.</p> <p>12 A Someone I would see in the building and see at</p> <p>13 general faculty meetings.</p> <p>14 Q Okay. Did you prepare at all for today's</p> <p>15 deposition?</p> <p>16 A For today's deposition, yes. I met with</p> <p>17 Stephanie this summer.</p> <p>18 Q Okay.</p> <p>19 A And I reviewed documents relative to my part and</p> <p>20 my role in this process.</p> <p>21 Q When was --</p> <p>22 MS. PEET: I'm just going to instruct you,</p> <p>23 and I know Mr. Cohen didn't ask you any questions about</p> <p>24 it, but you are not to discuss any substantive</p> | <p style="text-align: right;">Page 9</p> <p>1 as a grand jury and decides whether a grievance --</p> <p>2 whether procedure has been followed and whether the</p> <p>3 grievant should go forward. If the person appeals,</p> <p>4 then the head of faculty senate calls a committee from</p> <p>5 a pool of I think it's 15 tenured faculty members and</p> <p>6 we are appointed to adjudicate the substance of the</p> <p>7 case.</p> <p>8 In this case responding to -- I guess we all</p> <p>9 obviously saw, you know, as part of our review process</p> <p>10 Sister Anne's documents to -- Fred Fagal's appeal to</p> <p>11 Anne Munley, Anne Munley's written responses, all of</p> <p>12 the back and forth.</p> <p>13 Q Okay.</p> <p>14 A But we -- bottom line we were supposed to</p> <p>15 adjudicate the substance of Fred's grievance.</p> <p>16 Q And you were supposed to adjudicate the</p> <p>17 substance of his grievance or the administration's</p> <p>18 requested of discipline of him?</p> <p>19 A Of his appeal which was -- his appeal which was</p> <p>20 his response, his grievance against Sister Anne's</p> <p>21 statement of charges.</p> <p>22 Q Okay.</p> <p>23 A So we had to look at Sister Anne's statement of</p> <p>24 charges and also why Fred said that those were not</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 be the review of substance, the termination and denial<br/>2 of tenure charges. We understand that the issues of<br/>3 suspension and procedure were resolved by the FGC. Did<br/>4 I read that correctly?</p> <p>5 A You did read it correctly.</p> <p>6 Q And P.D. stands for Patricia Dunleavy, right?</p> <p>7 A That's correct.</p> <p>8 Q And FGC stands for Faculty Grievance Committee,<br/>9 right?</p> <p>10 A Correct.</p> <p>11 Q Now, earlier today I think you said that your<br/>12 committee, one of the purposes was to consider<br/>13 Professor Fagal's suspension; correct?</p> <p>14 A We later came to consider that in our<br/>15 deliberations, but at this moment in the process of<br/>16 figuring out who does what and what our role was in the<br/>17 judicial process at this moment we were less sure.</p> <p>18 Q So what made you sure later that you were<br/>19 supposed to consider the suspension?</p> <p>20 A We just -- because the same action precipitated<br/>21 the suspension and the dismissal. And so we did not<br/>22 prepare a separate statement on the suspension because<br/>23 if you found -- since our findings upheld a greater<br/>24 charge on the same action, it doesn't make any sense</p>  | <p style="text-align: right;">Page 32</p> <p>1 revocation of tenure, which in some ways is the more<br/>2 serious issue were found to be justified.</p> <p>3 MR. COHEN: Okay. Can we have this marked<br/>4 as Bittel 8 please.</p> <p>5 (Whereupon Bittel Exhibit 8 was marked for<br/>6 identification.)</p> <p>7 BY MR. COHEN:</p> <p>8 Q And could you read this to yourself and let me<br/>9 know when you're finished please.</p> <p>10 A Okay.</p> <p>11 Q Do you recognize this?</p> <p>12 A It appears to -- I vaguely recognize it. It<br/>13 looks like my writing.</p> <p>14 Q Are these notes that you took about a telephone<br/>15 conversation that you had with Pat Dunleavy?</p> <p>16 A Yes.</p> <p>17 MS. PEET: And for the record, can we<br/>18 describe the blackouts so she understands.</p> <p>19 BY MR. COHEN:</p> <p>20 Q Yes. The blackouts no one is saying that you<br/>21 did that. Marywood's attorneys have to redact certain<br/>22 things --</p> <p>23 A Okay.</p> <p>24 Q -- because they may be privileged.</p>   |
| <p style="text-align: right;">Page 31</p> <p>1 that they wouldn't uphold a lesser charge on the same<br/>2 action.</p> <p>3 Q So did you consider that -- did you think that<br/>4 reviewing the suspension; if you had already determined<br/>5 that Professor Fagal's termination was appropriate, did<br/>6 that lead you to think that you did not need to<br/>7 consider whether the suspension was appropriate?</p> <p>8 MS. PEET: Objection to the form.</p> <p>9 THE WITNESS: We discussed the suspension,<br/>10 but we did not prepare a formal -- we did not prepare a<br/>11 statement on it because if termination is justified,<br/>12 why wouldn't a suspension be justified unless there<br/>13 were a procedural problem and the FGC had already<br/>14 adjudicated that there was not a procedural issue.</p> <p>15 BY MR. COHEN:</p> <p>16 Q So why would you discuss the suspension at all<br/>17 if you thought that the termination was appropriate?</p> <p>18 A Because it was on the table. I mean we did have<br/>19 to ask ourselves first could suspension be justified by<br/>20 the actions and then could termination and revocation<br/>21 of tenure be justified by the actions.</p> <p>22 Q But you didn't make any formal finding about<br/>23 whether the suspension was appropriate?</p> <p>24 A No, because termination and especially</p> | <p style="text-align: right;">Page 33</p> <p>1 A Okay.</p> <p>2 Q So ignore that please.</p> <p>3 A Okay.</p> <p>4 Q So based on these notes, Doctor Dunleavy told<br/>5 you that your committee needed to provide an<br/>6 independent review?</p> <p>7 A Yes, that word was used several times.</p> <p>8 Q And that your committee needed to come to a<br/>9 decision independently from the administration?</p> <p>10 A That was made very clear to us from the first<br/>11 meeting. The first time we met with Sister Gail and<br/>12 Pat Dunleavy, we were told that there's no punitive<br/>13 action against you if you find against the<br/>14 administration. There's no -- you know, that you need<br/>15 to be an independent review or an independent review of<br/>16 the substance of the charges.</p> <p>17 Q Point five here you're taking notes on advice<br/>18 that Doctor Dunleavy gave you about when the<br/>19 progressive discipline policy applies and when it<br/>20 doesn't apply, right?</p> <p>21 A Correct.</p> <p>22 Q So you understood that there are some cases in<br/>23 which the progressive discipline policy does not apply?</p> <p>24 A Yes. And we came to the conclusion prior to</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 this conversation with Pat that we wanted to verify<br/>2 with her as well. This was a conclusion that we came<br/>3 to based on our reading of the progressive discipline<br/>4 policy that she gave me previously.</p> <p>5 Q How did you come to the conclusion that the<br/>6 progressive discipline policy sometimes doesn't apply?</p> <p>7 A The word may, it's a verb.</p> <p>8 MS. PEET: Do you need to look at<br/>9 something?</p> <p>10 THE WITNESS: Should I look in the --</p> <p>11 BY MR. COHEN:</p> <p>12 Q I'm not asking you to look at the exhibit yet.</p> <p>13 A Okay. It was the wording and the language of<br/>14 the policy particularly, the verbs like may and might<br/>15 as opposed to will or should.</p> <p>16 Q Let's turn back to Bittel 5. This is the<br/>17 progressive discipline policy, right?</p> <p>18 A Yes, it is.</p> <p>19 Q Now, can you tell me again how you came to the<br/>20 conclusion that in some cases this policy does not<br/>21 apply?</p> <p>22 MS. PEET: Just for clarification, that the<br/>23 policy didn't apply generally or the policy doesn't<br/>24 apply in this situation?</p>   | <p style="text-align: right;">Page 36</p> <p>1 evident in this case.<br/>2 Similarly in the first paragraph of the policy<br/>3 statement may be rectified by an informal education<br/>4 process, we did not see this as a -- we considered<br/>5 whether this was a situation where an educational<br/>6 process, an informal education process -- whether<br/>7 personal and professional problems that may be<br/>8 rectified by an informal educational process applied to<br/>9 this case, and we determined that it did not apply to<br/>10 this case.</p> <p>11 Q So if the progressive discipline policy didn't<br/>12 apply to this case, what written rules were you<br/>13 supposed to follow, if any?</p> <p>14 A Well, we looked here the justification for<br/>15 suspension; the faculty member may be suspended by the<br/>16 VPA at any time during the proceedings. Suspension is<br/>17 justified if immediate harm to the faculty members or<br/>18 others is threatened by the person's continuance in a<br/>19 faculty position. And we debated whether such harm was<br/>20 present in this situation and ultimately determined<br/>21 that it was.</p> <p>22 Q But the suspension paragraph is part of the<br/>23 progressive discipline policy, right?</p> <p>24 A Yes.</p> |
| <p style="text-align: right;">Page 35</p> <p>1 BY MR. COHEN:</p> <p>2 Q In this situation.</p> <p>3 A Because paragraph one; one, two, three, four<br/>4 lines down; because the university regards disciplinary<br/>5 action as corrective and not punitive, the policy<br/>6 recognizes personal and professional problems that may<br/>7 be rectified by an informal educational process as well<br/>8 as serious violations and professional responsibility<br/>9 is implicating possible recommendations for suspension<br/>10 or dismissal.</p> <p>11 Q And the word may is what --</p> <p>12 A Yes.</p> <p>13 Q -- led you to believe that in this case<br/>14 progressive discipline wasn't appropriate?</p> <p>15 A Right.</p> <p>16 Q Anything else in the policy that led you to that<br/>17 conclusion?</p> <p>18 A On top of page two special assistance; in those<br/>19 circumstances where it is evident that the faculty<br/>20 member is in need of special professional assistance,<br/>21 the vice president for academic affairs may require any<br/>22 one of these remedial actions. Where it is evident<br/>23 that the faculty member is in need of special<br/>24 professional assistance, we did not think it was</p> | <p style="text-align: right;">Page 37</p> <p>1 Q Okay.</p> <p>2 A But we didn't see any -- but the bottom line is<br/>3 that when it says the policy recognizes personal and<br/>4 professional problems that may be rectified, and we saw<br/>5 may be rectified as not applying, as written in a way<br/>6 that does not apply to every case; that you don't<br/>7 automatically get progressive discipline because it<br/>8 says may be rectified, not will be rectified.</p> <p>9 Q So if the progressive discipline policy didn't<br/>10 apply in this case, I guess my question is were there<br/>11 any other written rules that you thought the university<br/>12 was bound by --</p> <p>13 MS. PEET: Objection to the form.</p> <p>14 BY MR. COHEN:</p> <p>15 Q -- regarding discipline?</p> <p>16 A Yeah. I don't think I understand the form. I<br/>17 don't think I understand the phrasing.</p> <p>18 Q Okay. If you concluded that the progressive<br/>19 discipline policy, and by that I'm talking about the<br/>20 entire document that we're looking at now, did not<br/>21 apply --</p> <p>22 A Okay. I was not talking about the entire<br/>23 document. I was talking about the opportunity for<br/>24 remediation --</p>  |

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| <p style="text-align: right;">Page 38</p> <p>1 Q Okay.<br/>     2 A -- did not apply to these circumstances. The<br/>     3 policy applies but the opportunity for remediation, I<br/>     4 guess I was not clear in speaking before. The<br/>     5 opportunity for remediation is not guaranteed by this<br/>     6 policy.</p> <p>7 Q Okay.<br/>     8 A I would also point out in the end of the policy<br/>     9 statement it ends by saying is designed to be a series<br/>     10 of gradual steps involved, da, da, da, where applicable<br/>     11 and that means not every step is applicable to every<br/>     12 case and remediation in particular is not applicable to<br/>     13 every case.</p> <p>14 Q If someone in the administration like Pat<br/>     15 Dunleavy had told you that -- this is hypothetical --<br/>     16 had told you that the progressive discipline policy<br/>     17 applies in every case and that remediation applies in<br/>     18 every case, would you have come to the conclusion that<br/>     19 President Munley's termination of Professor Fagal was<br/>     20 appropriate?</p> <p>21 MS. PEET: Objection; calls for<br/>     22 speculation, assumes facts not in evidence. If you can<br/>     23 somehow answer that, you can answer.</p> <p>24 THE WITNESS: That's too speculative for me</p> | <p style="text-align: right;">Page 40</p> <p>1 Q Can we take a ten-minute break?<br/>     2 A Sure.<br/>     3 (Whereupon a recess took place.)<br/>     4 (Whereupon Bittel Exhibit 10 was marked for<br/>     5 identification.)<br/>     6 BY MR. COHEN:<br/>     7 Q Could you go through this and let me know when<br/>     8 you're finished please.<br/>     9 A Sure. I'm done.<br/>     10 Q Okay. So first page there's an e-mail from<br/>     11 Doctor O'Brien to you and Matt dated June 2, 2012 at<br/>     12 9:52 a.m., do you see that?<br/>     13 A Yes.<br/>     14 Q And Doctor O'Brien in the second paragraph he<br/>     15 says his current inclination is that it will be useful<br/>     16 to interview Sister Anne about a few narrow questions<br/>     17 and then he goes on to list them, right?<br/>     18 A Mm-mm.<br/>     19 MS. PEET: Is that a yes?<br/>     20 THE WITNESS: Yes, it is.<br/>     21 BY MR. COHEN:<br/>     22 Q Do you know whether the committee ever did get<br/>     23 the opportunity to ask these questions?<br/>     24 MS. PEET: Objection to the form.</p>   |
| <p style="text-align: right;">Page 39</p> <p>1 to answer.<br/>     2 MR. COHEN: Okay. Can we have this marked<br/>     3 as Bittel 9 please.<br/>     4 (Whereupon Bittel Exhibit 9 was marked for<br/>     5 identification.)<br/>     6 BY MR. COHEN:<br/>     7 Q Can you read this to yourself and let me know<br/>     8 when you're finished please.<br/>     9 A Yes.<br/>     10 Q This is an e-mail from you to Patricia Dunleavy<br/>     11 dated May 18, 2012 at 4:03 p.m., right?<br/>     12 A Mm-mm.<br/>     13 MS. PEET: Is that a yes?<br/>     14 THE WITNESS: Yes, that is.<br/>     15 BY MR. COHEN:<br/>     16 Q And here again you're saying to Doctor Dunleavy<br/>     17 we agreed that our charge should be the review of<br/>     18 substance, the termination and denial of tenure and<br/>     19 that you understood that the issues of suspension and<br/>     20 procedure were resolved by the Faculty Grievance<br/>     21 Committee; is that correct?<br/>     22 A That is what we understood at that moment. This<br/>     23 is basically our followup to her on the May 17th<br/>     24 meeting.</p>  | <p style="text-align: right;">Page 41</p> <p>1 MR. COHEN: What is it about the question?<br/>     2 MS. PEET: Whether or not they had the<br/>     3 opportunity.<br/>     4 BY MR. COHEN:<br/>     5 Q Let me rephrase it. Did the committee ever<br/>     6 actually ask these questions of Sister Anne?<br/>     7 A To the best of my recollection we did meet with<br/>     8 her, but I don't remember if these were the questions<br/>     9 that we discussed or what the final form of the<br/>     10 questions we discussed was.<br/>     11 Q But you do know that you met with her, but you<br/>     12 just don't remember the exact questions?<br/>     13 A I'm fairly certain we met with her, but I don't<br/>     14 remember for sure. If I had to guess, I would guess --<br/>     15 Q Don't guess.<br/>     16 A Okay.<br/>     17 Q In the next paragraph Doctor O'Brien says that<br/>     18 he also thinks that we may want to interview Fred by<br/>     19 phone, do you see that?<br/>     20 A Yeah.<br/>     21 Q And that never happened, right?<br/>     22 A I don't believe that happened.<br/>     23 Q Just take my word for it, it didn't happen. Do<br/>     24 you know why you guys didn't interview Fred by phone?</p> |

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| <p style="text-align: right;">Page 46</p> <p>1                   (Whereupon Bittel Exhibit 12 was marked for<br/>2 identification.)</p> <p>3 BY MR. COHEN:</p> <p>4     Q Do you recognize this document?</p> <p>5     A It's meeting minutes, June 18th -- June 19th.</p> <p>6     Q And again you generated these minutes?</p> <p>7     A I did.</p> <p>8     Q Okay. Is there any reason to doubt the accuracy<br/>9 of these minutes?</p> <p>10    A Let me take a look. I would like to read it<br/>11 closer.</p> <p>12    Q Sure.</p> <p>13    A Okay. I'm done.</p> <p>14    Q Okay. Based on your reading, is there any<br/>15 reason to doubt the accuracy of these minutes?</p> <p>16    A I don't see any.</p> <p>17    Q So it's clear from these minutes that you did<br/>18 meet with Sister Anne on June 18th, right?</p> <p>19    A That's correct.</p> <p>20    Q And you don't remember what was discussed?</p> <p>21    A No.</p> <p>22    Q Do you remember whether President Munley ever<br/>23 informed you that Professor Fagal had asked for an<br/>24 opportunity to answer her questions in writing?</p>   | <p style="text-align: right;">Page 48</p> <p>1     BY MR. COHEN:<br/>2     Q Yeah. But I asked about would it have changed<br/>3 your opinion.</p> <p>4         MS. PEET: Same objection.</p> <p>5         THE WITNESS: Would it have changed my mind<br/>6 to know that he had requested that?</p> <p>7 BY MR. COHEN:</p> <p>8     Q Yes.</p> <p>9     A And would it have changed my mind about what<br/>10 specifically?</p> <p>11    Q About whether remediation was appropriate.</p> <p>12    A It would not have changed my mind on the<br/>13 remediation question because the policy does not<br/>14 require remediation to be offered.</p> <p>15    Q Now, at the bottom of -- do you see the<br/>16 paragraph that begins we then took our first vote?</p> <p>17    A Yes.</p> <p>18    Q And the bottom of that paragraph it says he also<br/>19 had multiple opportunities to make amends, show remorse<br/>20 and explain his actions; do you see that?</p> <p>21    A Yes.</p> <p>22    Q Does that imply that you felt that he never took<br/>23 any of those opportunities?</p> <p>24    A That's referring to when Anne Munley asked him</p>  |
| <p style="text-align: right;">Page 47</p> <p>1     A I don't recall that.</p> <p>2     Q Other than the fact that you don't recall her<br/>3 saying it to you, did you know if Professor Fagal had<br/>4 asked for an opportunity to answer President Munley's<br/>5 questions in writing?</p> <p>6     A I don't think so. Meaning President Munley's<br/>7 questions with regard to the original questions she<br/>8 asked on January 23rd with respect to the video?</p> <p>9     Q Right.</p> <p>10    A I don't think so.</p> <p>11    Q Okay. If you had done that, would that have<br/>12 changed any of your conclusions about -- any of the<br/>13 conclusions that you made and adjudicated the<br/>14 discipline that was imposed on Fred?</p> <p>15    MS. PEET: Objection. She said she doesn't<br/>16 think so, but she doesn't know. And secondly, it calls<br/>17 for speculation, it assumes facts not in evidence. You<br/>18 can answer.</p> <p>19    THE WITNESS: I can't guess what the -- we<br/>20 came to our decision as a committee, not as a -- we<br/>21 thought about the issue individually, but we came --<br/>22 our decision and our deliberations were collective and<br/>23 I can't speculate as to what other people would say.</p> <p>24         ---</p> | <p style="text-align: right;">Page 49</p> <p>1     to explain his actions on January 23rd and he did not<br/>2 and did not subsequently in the period to our knowledge<br/>3 and did not subsequently after that explain his reasons<br/>4 to Anne Munley.</p> <p>5     Q Right. But I'm now bringing to your attention<br/>6 if he had said at that meeting with President Munley<br/>7 can I put my -- can I answer your questions in writing,<br/>8 that would sort of conflict with the view that he --</p> <p>9     A Had multiple opportunities?</p> <p>10    Q Yes.</p> <p>11    MS. PEET: Objection to form, calls for<br/>12 speculation. That's your opinion, doesn't necessarily<br/>13 means it's her opinion and it assumes that he would<br/>14 have put in writing that he was remorseful, which there<br/>15 is no evidence that he would have done such a thing.</p> <p>16 BY MR. COHEN:</p> <p>17    Q I'm looking for your answer.</p> <p>18    A You're looking for my answer.</p> <p>19    Q If he had asked for an opportunity to answer<br/>20 President Munley's questions in writing, that would<br/>21 make this statement not very accurate; right; he also<br/>22 had multiple opportunities to make amends, show remorse<br/>23 and explain his actions?</p> <p>24         MS. PEET: Objection to the form.</p> |

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| <p style="text-align: right;">Page 50</p> <p>1       THE WITNESS: If we knew that that was the<br/>     2 case, yes, that would make my statement there, it would<br/>     3 problematize my statement there. It may not have<br/>     4 changed the outcome.</p> <p>5 BY MR. COHEN:</p> <p>6       Q On the second page it says charge two, the<br/>     7 bottom of that paragraph it says while Fagal is correct<br/>     8 in saying that he was not getting a review in this<br/>     9 point, there might have been one if he had answered<br/>     10 Munley's questions on January 23rd. Do you see that?</p> <p>11      A Yes.</p> <p>12      Q And again that would -- if he had asked for an<br/>     13 opportunity to answer her questions in writing, that<br/>     14 would sort of conflict with the statement here; right?</p> <p>15      MS. PEET: Objecting to the form, it calls<br/>     16 for speculation. You can answer.</p> <p>17      THE WITNESS: It would object, it would --<br/>     18 yes, it would conflict with that point, but that's not<br/>     19 the -- as with the previous case, the point that is<br/>     20 potentially invalidated is not the only point that was<br/>     21 made or the only reason on the table.</p> <p>22 BY MR. COHEN:</p> <p>23      Q On the last page under action items it says<br/>     24 Povse -- how do you pronounce his name by the way?</p> | <p style="text-align: right;">Page 52</p> <p>1       correct?</p> <p>2      A I believe that's correct.</p> <p>3      Q Why?</p> <p>4      A Because our -- Anne Munley is the person who<br/>     5 asked us keep her apprised of the timeline and she's<br/>     6 the one who said can you -- she's the one who said when<br/>     7 are you going to be finished, I need to know what the<br/>     8 date is.</p> <p>9      Q She said that?</p> <p>10     A I mean I can't say with 100 percent certainty,<br/>     11 but I know that she asked us when our expected date of<br/>     12 completion would be because she didn't want it to drag<br/>     13 out too long either. But this was in -- as far as I<br/>     14 can remember, it was in response to her inquiry about<br/>     15 when we would submit a final decision.</p> <p>16     Q How many inquiries did she make about the<br/>     17 timetable?</p> <p>18     A I don't remember, obviously at least one.</p> <p>19     Q Did she say why it was important that this not<br/>     20 drag out?</p> <p>21     A I don't remember. I mean I'm guessing that<br/>     22 there's -- you're supposed to complete --</p> <p>23     MS. PEET: Don't guess.<br/>     24     ---</p> |
| <p style="text-align: right;">Page 51</p> <p>1      A Povse.</p> <p>2      Q Povse will contact Anne Munley and apprise her<br/>     3 of her progress, is that right?</p> <p>4      A That is correct. He was not indicating --</p> <p>5      MS. PEET: There's no question on the<br/>     6 table. Let him ask.</p> <p>7 BY MR. COHEN:</p> <p>8      Q Why did -- why was it important that Povse keep<br/>     9 President Munley apprised of the progress of the<br/>     10 committee?</p> <p>11     MS. PEET: Objection to the form.</p> <p>12     THE WITNESS: By progress he meant<br/>     13 timeline. This was -- these deliberations largely<br/>     14 occurred over the summer when we were all off contract<br/>     15 and had various travel plans. So it took a lot longer<br/>     16 to get through it than we had expected because one of<br/>     17 us would be away and then the other would be away. And<br/>     18 there's three people, you know, who did not plan their<br/>     19 summer expecting this. So he was apprising her of --<br/>     20 by progress he means of our timeline and we are at the<br/>     21 stage of drafting a decision.</p> <p>22 BY MR. COHEN:</p> <p>23     Q But nobody wanted to keep Professor Fagal<br/>     24 informed of the progress of the committee, is that</p>  | <p style="text-align: right;">Page 53</p> <p>1      BY MR. COHEN:</p> <p>2      Q She didn't say?</p> <p>3      A I don't remember her saying.</p> <p>4      Q Okay. Did you in any way feel time pressured?</p> <p>5      A No.</p> <p>6      Q Did you in any way feel that she was pressuring<br/>     7 you to rule in her way?</p> <p>8      A Not at all. And again we were assured by Pat<br/>     9 Dunleavy and -- we were assured by Pat Dunleavy on the<br/>     10 first day that nobody in the administration can take<br/>     11 any action against you if your decision disagrees with<br/>     12 theirs. We were promised that protection.</p> <p>13     Q The last paragraph says after we workshop our<br/>     14 draft, we will send it to Will Anthony for comment, is<br/>     15 he an independent voice or does he work for<br/>     16 Munley/Marywood?</p> <p>17     A Yes.</p> <p>18     Q Did you ever get an answer to your question is<br/>     19 he an independent voice?</p> <p>20     A I don't recall.</p> <p>21     Q Well, why did you think that he might work for<br/>     22 Munley/Marywood?</p> <p>23     MS. PEET: Objection to the form, assumes<br/>     24 facts not in evidence.</p>                    |

| Page 66  | Page 68  |
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| <p>1 appropriate as opposed to procedurally appropriate?<br/>     2 A That was ours. But if it was substantively<br/>     3 appropriate for suspension -- if it was substantively<br/>     4 appropriate; if a case was substantively appropriate<br/>     5 for suspension, it may not be substantively appropriate<br/>     6 for termination. But if a case is appropriate for<br/>     7 termination, then of course the lesser charge applies<br/>     8 as well; or it meets the lower standard for suspension<br/>     9 if it meets the higher required for termination and the<br/>     10 highest standard required for revocation of tenure<br/>     11 which is an even higher standard.</p> <p>12 Q And is that why your review of President<br/>     13 Munley's decision does not address whether the<br/>     14 suspension was appropriate?</p> <p>15 MS. PEET: Asked and answered. You can go<br/>     16 ahead one more time.</p> <p>17 THE WITNESS: Correct.</p> <p>18 BY MR. COHEN:</p> <p>19 Q Okay. If you look at Bittel 5.</p> <p>20 A Okay.</p> <p>21 Q Do you see at the bottom that there's a<br/>     22 paragraph called suspension?</p> <p>23 A Yes.</p> <p>24 Q It says the faculty member may be suspended by</p> | <p>1 sentence Doctor Fagal's egregious violation of our core<br/>     2 values especially the value of respect has caused grave<br/>     3 and irreparable harm to our community. And above in --<br/>     4 under charge one; we are in agreement that Sister Anne<br/>     5 Munley is justified in saying that Doctor Fagal's<br/>     6 actions constitute such an injury.</p> <p>7 BY MR. COHEN:</p> <p>8 Q Okay. Now, going back to this dismissal<br/>     9 paragraph in Bittel Exhibit 5.</p> <p>10 A Okay.</p> <p>11 Q It mentions if remedial action is taken during<br/>     12 the suspension, right?</p> <p>13 A Right.</p> <p>14 Q Now, your committee could not have determined<br/>     15 whether remedial actions taken during the suspension<br/>     16 resolved any issues that led to the suspension, right?</p> <p>17 MS. PEET: Objection. This is a complete<br/>     18 mischaracterization of testimony. She already<br/>     19 testified that they confirmed that remediation was not<br/>     20 appropriate here. So what you're asking her is you're<br/>     21 assuming what she said I think forgetting about it.<br/>     22 She clearly talked about the remediation and how it<br/>     23 impacts this case.</p> <p>24 THE WITNESS: Yes. We determined that</p> |
| Page 67  | Page 69  |
| <p>1 the vice president for academic affairs at any time<br/>     2 during the proceedings involving him or her, suspension<br/>     3 is justified if immediate harm to the faculty member or<br/>     4 others is threatened by person's continuance of the<br/>     5 faculty position; right?</p> <p>6 A Yes.</p> <p>7 Q And then below that there's a paragraph it says<br/>     8 dismissal, right?</p> <p>9 A Mm-mm.</p> <p>10 MS. PEET: Is that a yes?</p> <p>11 THE WITNESS: Yes, it is a yes.</p> <p>12 BY MR. COHEN:</p> <p>13 Q It says if remedial actions taken during the<br/>     14 suspension does not sufficiently resolve the issues<br/>     15 that lead to the suspension, the university may move<br/>     16 towards dismissal of the faculty member; right?</p> <p>17 A Yes.</p> <p>18 Q So doesn't that suggest that if a suspension is<br/>     19 not appropriate, that the university cannot even try to<br/>     20 terminate an employee?</p> <p>21 MS. PEET: Objection to the form. You can<br/>     22 answer if you know.</p> <p>23 THE WITNESS: I don't know. We do say<br/>     24 here, we do say that the -- we do say in the final</p>   | <p>1 remediation, though the policy makes it possible does<br/>     2 not say it has to be offered in every situation and we<br/>     3 determined that this was not a situation where<br/>     4 remediation was a fruitful avenue or was justified.</p> <p>5 BY MR. COHEN:</p> <p>6 Q So based on that view it was the committee's<br/>     7 opinion that President Munley could move directly from<br/>     8 suspension to termination?</p> <p>9 A She did not need to offer remediation before<br/>     10 moving to termination, no, because remediation is not a<br/>     11 guarantee.</p> <p>12 Q We're coming back to Bittel 15, paragraph C<br/>     13 begins Doctor Fagal is given the opportunity to explain<br/>     14 his video; do you see that?</p> <p>15 A Yes. This is the section where we give the<br/>     16 background to our discussion of charges.</p> <p>17 Q And again this paragraph doesn't account,<br/>     18 couldn't account for the fact that Doctor Fagal had<br/>     19 asked for an opportunity to explain himself in writing;<br/>     20 correct?</p> <p>21 A Correct.</p> <p>22 Q Because you didn't know that?</p> <p>23 A We did not know that.</p> <p>24 Q On the second page under charge two, again it</p>  |

# EXHIBIT U

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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FREDERICK F. FAGAL, JR. : CIVIL ACTION  
Plaintiff, : NO. 3:14-cv-02404-ARC  
vs. : (JUDGE CAPUTO)  
MARYWOOD UNIVERSITY,  
Defendant. :  
- - -

June 28, 2016

Oral deposition of Edward Joseph O'Brien, taken pursuant to notice, was held at the Radisson Lackawanna Station Hotel, Suite 206, 700 Lackawanna Avenue, Scranton, Pennsylvania, commencing at 12 p.m., on the above date, before Judy A. Black, a Registered Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

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Seven Penn Center, 8th Floor  
1635 Market Street  
Philadelphia, Pennsylvania 19103  
(866) 624-6221

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| <p style="text-align: right;">Page 22</p> <p>1       A. Well, I have a bit of a question about<br/>2 termination versus suspension, exactly how that was<br/>3 understood at the time.</p> <p>4       Q. Let's back up. Which area? And point<br/>5 to me or direct me to the place on this document, if<br/>6 you have some questions about the accuracy.</p> <p>7       A. It would be the fourth paragraph from<br/>8 the bottom of the first page.</p> <p>9       Q. Starting with, "The FGC informally"?</p> <p>10      A. Yes.</p> <p>11      Q. What is it about this paragraph that you<br/>12 question the accuracy?</p> <p>13      A. My recollection is that -- that we were<br/>14 paying attention to both suspension and termination,<br/>15 but the substance of the termination charge was the<br/>16 most important. That was the focus, but -- it says,<br/>17 "The FGC informally via Sister Gail advised" -- it<br/>18 seems a little confusing, that paragraph. I don't<br/>19 recall how that was -- how that was reflected in the<br/>20 meeting discussion.</p> <p>21      Q. And a minute ago, I think you said that<br/>22 you recall your committee's role as reviewing the<br/>23 substance of Professor Fagal's discipline, and you<br/>24 mean as opposed to the procedure?</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>  | <p style="text-align: right;">Page 24</p> <p>1       Q. Okay. Do you ever recall yourself or<br/>2 anyone on your committee communicating to Professor<br/>3 Fagal this view of the role of your committee being<br/>4 only a substantive review as opposed to procedural<br/>5 review?</p> <p>6           MS. PEET: Objection to the form.</p> <p>7       Q. You can answer. Unless your attorney<br/>8 says --</p> <p>9           MR. FABER: I'm sorry, yes. You can go<br/>10 ahead and answer. I'll tell you when you can't<br/>11 answer.</p> <p>12      A. Okay. Can you repeat the question? I'm<br/>13 not sure what you're asking.</p> <p>14      Q. Sure. A minute ago I think you<br/>15 testified that your view of the role of your<br/>16 committee was to review the substance of Professor<br/>17 Fagal's discipline, not the procedure. Am I correct?</p> <p>18      A. I'd say it was more primary to focus on<br/>19 the substance, define the disposition of the charges<br/>20 and --</p> <p>21      Q. Do you know whether Professor Fagal was<br/>22 made aware by anyone on the committee of that<br/>23 limitation, that the committee would only review --<br/>24 or primarily review substantive -- the substantive</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>                            |
| <p style="text-align: right;">Page 23</p> <p>1       A. Yes.</p> <p>2       Q. And what led you to believe that that --<br/>3 that your committee's role was reviewing the<br/>4 substance and not the procedure?</p> <p>5       A. Our discussions, our review of<br/>6 university policy documents, discussion with Erin<br/>7 Sadlack in this meeting. That was part of the<br/>8 process of delineation of what were the overlapping<br/>9 responsibilities of the committees, what were the<br/>10 separate responsibilities of the committees. One of<br/>11 the purposes of this meeting was to just clarify how<br/>12 these two processes would relate to one another,<br/>13 preserving their independence but also trying to not<br/>14 duplicate one another's work if that wasn't<br/>15 necessary.</p> <p>16      And I assume there's documentation about<br/>17 what Dr. Sadlack's committee -- we were not privy to<br/>18 their, nor did we ask for their process or their --<br/>19 their notes and working documents. We didn't want to<br/>20 be unduly influenced by their deliberations. So that<br/>21 was part of the differentiation, separation of the<br/>22 two committees. We didn't want our committee to just<br/>23 repeat what their committee had reviewed, so we<br/>24 wanted to do our own independent work.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 25</p> <p>1       discipline?</p> <p>2           A. No, I don't know.</p> <p>3           Q. Okay.</p> <p>4           MR. COHEN: Could you have this marked<br/>5 as O'Brien-8, please?</p> <p>6           (O'Brien-8, E-mail dated May 22, 2012,<br/>7 with attachments, Bates Nos. DEF000337-342, is<br/>8 received and marked for identification.)</p> <p>9           Q. Dr. O'Brien, do you recognize the<br/>10 document that has just been placed before you?</p> <p>11          A. It appears to be a note from me to Helen<br/>12 regarding minutes from the first two meetings.</p> <p>13          Q. And attached to this note are these<br/>14 minutes with comments, correct?</p> <p>15          A. Yes.</p> <p>16          Q. And do you know whether any of these<br/>17 comments were ever formally adopted into, like, a<br/>18 final version of the minutes?</p> <p>19           MS. PEET: Objection to the form.</p> <p>20          A. No. I would -- well, I would assume<br/>21 we -- in a subsequent meeting or by e-mail we would<br/>22 have discussed these and approved revised minutes, I<br/>23 believe. So I don't have any reason to think they<br/>24 weren't considered. Which ones were accepted or not</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 received and marked for identification.)</p> <p>2 Q. Do you recognize this e-mail and the<br/>3 attachment?</p> <p>4 A. This looks like the final version with<br/>5 Helen's explanation of what happened.</p> <p>6 Q. Helen says to Sister Munley here,<br/>7 "Hopefully this one will work. I'll ask Mat to edit<br/>8 it and sign the hard copy, as well."</p> <p>9 Do you remember actually signing a hard<br/>10 copy?</p> <p>11 A. No.</p> <p>12 Q. No, you didn't, or you don't remember?</p> <p>13 A. I don't remember.</p> <p>14 Q. Do you remember whether your committee<br/>15 reviewed whether Professor Fagal's suspension was<br/>16 proper?</p> <p>17 A. My recollection was that we reviewed<br/>18 both the suspension and the termination kind of as<br/>19 one event. They were so close in proximity, but,<br/>20 again, I defer to whatever we said in the document as<br/>21 whenever the termination was.</p> <p>22 Q. Coming back to this -- the final version<br/>23 of the faculty senate ad hoc hearing committee<br/>24 review, you see paragraph A begins, "We acknowledge<br/><b>MAGNA LEGAL SERVICES</b></p>                       | <p style="text-align: right;">Page 40</p> <p>1 determined that Sister Anne Munley followed<br/>2 appropriate procedure in moving directly to<br/>3 termination." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Does this sentence refresh your<br/>6 recollection over whether your committee actually did<br/>7 consider the suspension or whether they just<br/>8 considered termination?</p> <p>9 MS. PEET: Objection to form,<br/>10 mischaracterization of testimony. You can answer.</p> <p>11 A. The procedure -- procedural issue is one<br/>12 thing. The substantive issue was what I think we<br/>13 were focused on, and I think the substantive issue<br/>14 was essentially the same with regard to suspension<br/>15 and revocation or termination. So the timing of the<br/>16 two, I think, is what's being referenced there, that<br/>17 determined had followed appropriate procedure, that<br/>18 she could have done things in that order<br/>19 procedurally. We didn't adjudicate that, but the<br/>20 substance of her decision was more the focus of our<br/>21 work. The timing of when she did things was less the<br/>22 focus of what of what we attended to.</p> <p>23 MR. COHEN: Let's mark this O'Brien-16.<br/>24 (O'Brien-16, E-mail dated July 6, 2012,<br/><b>MAGNA LEGAL SERVICES</b></p> |
| <p style="text-align: right;">Page 39</p> <p>1 that revocation of tenure"?</p> <p>2 A. Yes.</p> <p>3 Q. And further down the paragraph, it says,<br/>4 "We are mindful of the potential or perceived threat<br/>5 to academic freedoms when a speech violation leads to<br/>6 revocation of tenure." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What did you mean by this sentence?</p> <p>9 MS. PEET: Objection to the form.</p> <p>10 A. That faculty have a right to, in terms<br/>11 of academic freedom, speak freely, and any limitation<br/>12 to that is something to be took very seriously. And<br/>13 that's the reason for tenure, that people can speak<br/>14 freely.</p> <p>15 Q. In paragraph C, it says, "Dr. Fagal was<br/>16 given the opportunity to explain his video in his<br/>17 meeting with Sister Anne Munley." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Was your committee informed that<br/>20 Dr. Fagal had asked for an opportunity to respond in<br/>21 writing to President Munley?</p> <p>22 A. I don't recall.</p> <p>23 Q. Also in paragraph C, the last sentence,<br/>24 it says, "The faculty grievance committee has already<br/><b>MAGNA LEGAL SERVICES</b></p> | <p style="text-align: right;">Page 41</p> <p>1 with attachment, Bates Nos. DEF001494-496, is<br/>2 received and marked for identification.)</p> <p>3 Q. If you could read this to yourself and<br/>4 let me know when you're finished, Dr. O'Brien.</p> <p>5 A. Is this final page part of what I'm<br/>6 reading now?</p> <p>7 Q. Um-hum.</p> <p>8 A. Okay.</p> <p>9 Q. So in this first document, this e-mail,<br/>10 this is from Professor Fagal to your committee dated<br/>11 July 6, 2012, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you remember receiving this?</p> <p>14 A. Yes.</p> <p>15 Q. And in this e-mail, Dr. Fagal requested<br/>16 that your committee convene to review the<br/>17 appropriateness of his suspension, correct?</p> <p>18 A. He raises a number of different issues,<br/>19 but that was one of them.</p> <p>20 Q. Your committee did not, in fact, convene<br/>21 to review the suspension, correct?</p> <p>22 MS. PEET: Objection to the form,<br/>23 mischaracterization of testimony.</p> <p>24 A. I don't know if we met after this. I'd<br/><b>MAGNA LEGAL SERVICES</b></p>   |

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| <p style="text-align: right;">Page 42</p> <p>1 have to look at the record and I don't have that in<br/>2 front of me. Whether we met or talked, e-mailed, I<br/>3 don't, sitting here, remember what we had -- what<br/>4 deliberations we did. We did discuss it.</p> <p>5 Q. Discuss what?</p> <p>6 A. The reaction to his -- his message.</p> <p>7 Q. And what was -- what specifically was<br/>8 said during that discussion?</p> <p>9 A. I need something to refresh my memory.<br/>10 I don't have an independent memory of what that<br/>11 discussion was, other than that we were not persuaded<br/>12 by, you know, Fred's e-mail message.</p> <p>13 Q. And were you aware that Sister Cabral<br/>14 and Sister Anne had determined that the committee be<br/>15 convened twice, once to review the suspension, once<br/>16 the termination?</p> <p>17 MS. PEET: Objection to the form, lack<br/>18 of foundation.</p> <p>19 You can answer.</p> <p>20 A. Can you repeat the question?</p> <p>21 Q. Were you aware that Sister Cabral and<br/>22 Sister Anne had determined that the committee be<br/>23 convened twice, once to review the suspension and<br/>24 once to review the termination?</p>  | <p style="text-align: right;">Page 44</p> <p>1 Q. Did you understand that question,<br/>2 Dr. O'Brien?</p> <p>3 A. No. Specifically what you're asking,<br/>4 I'm not sure. I mean, we were -- we were discussing<br/>5 as a committee both the suspension and the<br/>6 termination. They were so closely related in time<br/>7 that I don't know that we had a formal, now we're<br/>8 talking about this and we're going to have a separate<br/>9 convening of the committee. We were discussing both<br/>10 as part of our deliberation process, the substance of<br/>11 both, not the procedures. That was the other<br/>12 committee -- Erin's committee had evaluated the<br/>13 procedural parts of that. The substantive parts of<br/>14 that is what I understood we were adjudicating.</p> <p>15 Q. I understand your testimony. My<br/>16 question is different, and I think it's clear, but<br/>17 I'll restate it.</p> <p>18 Do you remember anybody telling your<br/>19 committee that it was to convene twice, once for<br/>20 Professor Fagal's suspension and once for the<br/>21 termination?</p> <p>22 MS. PEET: Objection to the form, lack<br/>23 of foundation. Same objection. You can answer.</p> <p>24 A. I don't -- I don't recall.</p> |
| <p style="text-align: center;">MAGNA LEGAL SERVICES</p> <p style="text-align: right;">Page 43</p> <p>1 MS. PEET: Same objection.<br/>2 A. My recollection is that those two<br/>3 issues, the substance of those two issues was part of<br/>4 our deliberation. Exactly how that was communicated<br/>5 to us and by whom, I don't, sitting here today,<br/>6 remember exactly how that was communicated to us.<br/>7 Q. So you do know that -- you said that<br/>8 someone did communicate to you that the committee was<br/>9 to be convened twice, once for the --<br/>10 A. Well, not that -- we considered both,<br/>11 the suspension and the termination.<br/>12 Q. I know that. My specific question is:<br/>13 Do you have any recollection of anyone, Sister Cabral<br/>14 or Sister Anne, telling your committee that it was to<br/>15 be convened twice, once for the suspension and once<br/>16 for the termination?<br/>17 MS. PEET: The way you asked the<br/>18 question, it assumed that it actually happened and<br/>19 that you're just asking him if he remembers that<br/>20 happened. It's a very inappropriate question. It's<br/>21 going to be very poorly received on the record, so<br/>22 I'm going to ask that you rephrase that question in a<br/>23 way that it doesn't assume facts not in evidence and<br/>24 it has some foundation to it.</p> | <p style="text-align: right;">Page 45</p> <p>1 MR. COHEN: Let's call this O'Brien<br/>2 Exhibit 17.<br/>3 (O'Brien-17, E-mail chain, Bates Nos.<br/>4 DEF001611-615, is received and marked for<br/>5 identification.)<br/>6 Q. Specifically I'd like you to look at<br/>7 page 3. There's an e-mail from you dated Monday,<br/>8 July 9, 2012, at 1:10 p.m. Do you see that?<br/>9 A. Yes.<br/>10 Q. Can you read that to yourself and let me<br/>11 know when you're finished?<br/>12 A. Okay.<br/>13 Q. When you refer to the university<br/>14 attorney, did you mean Will Anthony?<br/>15 A. I believe so. I'm not sure.<br/>16 Q. And why did you think that you would be<br/>17 wise to contact the university attorney?<br/>18 A. I think I'm addressing next steps, what<br/>19 the next steps of the committee process would be.<br/>20 What are the next steps?<br/>21 Q. Do you remember after sending this<br/>22 e-mail whether the university attorney was ultimately<br/>23 contacted by the committee?<br/>24 A. No. I don't recall.</p>  |
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| <p style="text-align: right;">Page 50</p> <p>1 of documents refreshing my memory.<br/>     2 Q. This is a hypothetical question. I<br/>     3 realize it might not have happened. If your<br/>     4 committee had received legal guidance to the effect<br/>     5 that progressive discipline at Marywood was required<br/>     6 in every case and that you could not simply skip<br/>     7 directly to termination and that remediation was<br/>     8 required, attempted remediation was required in every<br/>     9 instance, would you have voted the way you did to<br/>     10 support President Munley's actions?</p> <p>11 MS. PEET: Objection to the form. Calls<br/>     12 for speculation, assumes tons of facts not in<br/>     13 evidence, including the fact that he got legal<br/>     14 advice, that progressive discipline is required in<br/>     15 every case, that you can't skip progressive<br/>     16 discipline, and that remediation is required. But<br/>     17 given -- assuming that the sun and Mars -- the sun<br/>     18 and the moon and Pluto line up and you know the<br/>     19 hypothetical answer --</p> <p>20 Q. That's what a hypothetical is. A<br/>     21 hypothetical is asking you to make certain<br/>     22 assumptions.</p> <p>23 Do you need me to rephrase?</p> <p>24 A. Yeah.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 52</p> <p>1 CROSS-EXAMINATION BY MS. PEET:<br/>     2 Q. Dr. O'Brien, if you can look at<br/>     3 Exhibit 7, if you don't mind, in the middle of the<br/>     4 page with the paragraph that starts, "She explained."<br/>     5 A. Yes.<br/>     6 Q. And the "she," I believe, is Erin<br/>     7 Sadlack. Is that correct?<br/>     8 A. Yes.<br/>     9 Q. Okay. It says here, and I'm just<br/>     10 reading what it says, "Their charge was to review<br/>     11 whether procedure was properly followed, not to<br/>     12 review the substance of SAM's decision to suspend and<br/>     13 to later terminate." Do you see that?<br/>     14 A. Yes.<br/>     15 Q. It then continues to say, "Their<br/>     16 procedural review was limited to the charges to<br/>     17 suspension, not termination, revocation of tenure."<br/>     18 Do you see that?<br/>     19 A. Yes.<br/>     20 Q. Is that your understanding? Do you<br/>     21 believe that to be correct?<br/>     22 A. I don't know what they thought they were<br/>     23 doing, but I think our understanding from our<br/>     24 committee was that they had reviewed the termination<br/> <p style="text-align: center;">MAGNA LEGAL SERVICES</p></p> |
| <p style="text-align: right;">Page 51</p> <p>1 Q. Okay. Hypothetically, if your committee<br/>     2 had received legal guidance stating that progressive<br/>     3 discipline was required in every case and that the<br/>     4 university had to make an attempt to offer<br/>     5 remediation to the disciplined professor, would you<br/>     6 have voted the way you did to support President<br/>     7 Munley's actions?</p> <p>8 MS. PEET: Same objections.</p> <p>9 A. I don't know.</p> <p>10 Q. What would you -- do you need to know<br/>     11 more information or are you just -- you just don't<br/>     12 know how you would have voted?</p> <p>13 A. I don't. It's not what happened, so I<br/>     14 don't have an opinion about, you know --</p> <p>15 MR. COHEN: Let me just take a<br/>     16 one-minute break. I'll be right back.</p> <p>17 (A recess is taken.)</p> <p>18 Q. Back on the record.</p> <p>19 Did Helen Bittel ever tell you that she<br/>     20 had communicated with Marywood's attorneys?</p> <p>21 A. I believe so. I believe she did.</p> <p>22 MR. COHEN: Okay. I have nothing<br/>     23 further.</p> <p>24 MS. PEET: I have some questions.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>  | <p style="text-align: right;">Page 53</p> <p>1 and the revocation of tenure.</p> <p>2 Q. Okay. So it was your understanding that<br/>     3 the faculty grievance committee --</p> <p>4 A. From a procedural point of view.</p> <p>5 Q. Okay. So it's your understanding that<br/>     6 from a procedural point of view, the faculty<br/>     7 grievance committee reviewed both the suspension and<br/>     8 termination, correct?</p> <p>9 A. I think that was my understanding.</p> <p>10 Q. So as written here would not be correct.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Anyone either in Marywood<br/>     14 University or outside of Marywood University tell you<br/>     15 how you had to vote?</p> <p>16 A. No.</p> <p>17 Q. Did anyone either in Marywood University<br/>     18 or outside Marywood University suggest to you how you<br/>     19 should vote on this decision?</p> <p>20 A. No. No.</p> <p>21 Q. Did you fear that your job would be in<br/>     22 jeopardy if you didn't support President Munley's<br/>     23 decision?</p> <p>24 A. No.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>   |

| Page 54  | Page 56   |
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| 1 Q. Did anyone other than the committee<br>2 itself influence your decision to vote in support of<br>3 President Munley's decision?<br>4 A. No.<br>5 Q. Do you believe that you served on the<br>6 committee in an impartial fashion?<br>7 A. Yes.<br>8 Q. Do you believe that ultimately the<br>9 committee made the right decision?<br>10 A. Yes.<br>11 Q. Do you support the decision that you and<br>12 the committee made?<br>13 A. Yes.<br>14 Q. Do you know how you were selected to be<br>15 on the committee?<br>16 A. Not exactly. I believe that -- that<br>17 Fred had the right to request one member of the<br>18 committee and that I was someone he requested to be<br>19 on the committee.<br>20 Q. As of the time --<br>21 A. I don't know the process of that, but<br>22 that's my understanding of -- I don't know the<br>23 specific process he went through, was I the first<br>24 person, the second person, but I believe that's how I  | 1 university up to speed; thought he spoke well, is<br>2 knowledgeable.<br>3 Q. Okay. That's all you meant?<br>4 A. (Nodding head.)<br>5 MR. COHEN: No further questions.<br>6 (Whereupon, at 2:05 p.m., the deposition<br>7 of Edward Joseph O'Brien concluded.)<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24   |
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| Page 55  | Page 57   |
| 1 ended up on that committee.<br>2 Q. As of the time that you served on the<br>3 committee, would you have considered yourself friends<br>4 with Dr. Fagal?<br>5 A. We were friendly acquaintances, fellow<br>6 faculty members, colleagues.<br>7 MS. PEET: No further questions.<br>8 A. Not people that socialized outside<br>9 Marywood, but we've been on a number of committees<br>10 and, you know, I had a positive view of Fred and<br>11 valued him as a colleague.<br>12 MS. PEET: No further questions.<br>13 MR. COHEN: Follow-up.<br>14 REDIRECT EXAMINATION BY MR. COHEN:<br>15 Q. You said, Dr. O'Brien, that you had a<br>16 positive view of Fred?<br>17 A. Um-hum.<br>18 Q. Can you elaborate on that?<br>19 A. We served on a number of committees<br>20 together, in technology or other committees, and, you<br>21 know, I thought he was very up to date in technology,<br>22 practical about what -- you know, what were next<br>23 steps for the university to move forward in a way<br>24 that was practical and keeping -- keeping the | 1 CERTIFICATE<br>2<br>3 I HEREBY CERTIFY that the witness was<br>4 duly sworn by me and that the deposition is a<br>5 true record of the testimony given by the<br>6 witness.<br>7<br>8<br>9<br>10 Judy A. Black<br>11 Registered Professional Reporter<br>12 Dated: July 13, 2016<br>13<br>14<br>15<br>16 (The foregoing certification of this<br>17 transcript does not apply to any reproduction of<br>18 the same by any means, unless under the direct<br>19 control and/or supervision of the certifying<br>20 reporter.)<br>21<br>22<br>23<br>24 |
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# EXHIBIT V

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL, JR. : CIVIL ACTION  
Plaintiff, : NO. 3:14-cv-02404-ARC  
vs. : (JUDGE CAPUTO)  
MARYWOOD UNIVERSITY, :  
Defendant. :  
  
- - -

June 28, 2016

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Oral deposition of Mathew R. Povse, taken pursuant to notice, was held at the Radisson Lackawanna Station Hotel, Suite 206, 700 Lackawanna Avenue, Scranton, Pennsylvania, commencing at 3 p.m., on the above date, before Judy A. Black, a Registered Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

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(866) 624-6221

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| <p style="text-align: right;">Page 10</p> <p>1 Q. And what documents did you review?<br/>     2 A. Oh --<br/>     3 Q. If any?<br/>     4 A. I don't know. Lots of letters, lots of<br/>     5 memos. Whatever I had accessible to me.<br/>     6 MR. COHEN: Can we also have this marked<br/>     7 as Povse-1.<br/>     8 (Povse-1, Letter dated February 8, 2012,<br/>     9 with attachments, Bates Nos. DEF000207-226, is<br/>     10 received and marked for identification.)<br/>     11 Q. And, Mr. Povse, can you briefly review<br/>     12 this and let me know whether you recognize it?<br/>     13 A. I -- this is from -- I think I've seen<br/>     14 it.<br/>     15 Q. Is this the statement of charges that<br/>     16 President Munley made against Professor Fagal and<br/>     17 that your committee was asked to review?<br/>     18 A. I would say -- I would say yes.<br/>     19 Q. Okay. And you served on what's called<br/>     20 an ad hoc committee, correct?<br/>     21 A. Yes.<br/>     22 Q. And that committee consisted of you,<br/>     23 Edward O'Brien and Helen Bittel, correct?<br/>     24 A. Yes.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>  | <p style="text-align: right;">Page 12</p> <p>1 review much of anything for this --<br/>     2 Q. But you've --<br/>     3 A. -- for this meeting. But I've seen<br/>     4 this.<br/>     5 Q. Do you remember reading the whole thing<br/>     6 at any time?<br/>     7 A. Well, I prob -- I'm sure that I read it<br/>     8 when we were meeting. And, again, you know, there<br/>     9 was so much information that we had that I can't<br/>     10 recall. But I would -- whatever information we were<br/>     11 given, I could assure you that I read at the time we<br/>     12 were meeting for that committee.<br/>     13 Q. Okay.<br/>     14 MR. COHEN: Let's take O'Brien-6 and<br/>     15 call it also Povse-3.<br/>     16 (Povse-3, Minutes for Ad Hoc Committee<br/>     17 Meeting #1, May 11, 2012, Bates Nos. DEF001408-509,<br/>     18 is received and marked for identification.)<br/>     19 Q. Mr. Povse, do you recognize this<br/>     20 document?<br/>     21 A. It looks familiar. Yeah.<br/>     22 Q. What is it?<br/>     23 A. Minutes from our -- looks like our first<br/>     24 meeting.</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>  |
| <p style="text-align: right;">Page 11</p> <p>1 Q. And the job of your committee was to<br/>     2 adjudicate the charges that President Munley lodged<br/>     3 against Professor Fagal, correct?<br/>     4 A. To an extent.<br/>     5 Q. What do you mean by "to an extent"?</p> <p>6 A. We were to look at the substantive<br/>     7 portion of the charge, not the procedural, so --<br/>     8 Q. Okay.<br/>     9 A. That's what we were looking at.<br/>     10 MR. COHEN: Can you mark O'Brien-5 also<br/>     11 as Povse-2.<br/>     12 (Povse-2, E-mail dated May 6, 2012, with<br/>     13 attachments, Bates Nos. DEF001433-442, is received<br/>     14 and marked for identification.)<br/>     15 Q. And can you briefly review this and let<br/>     16 me know whether you recognize this document?<br/>     17 A. It looks familiar.<br/>     18 Q. Would you say that this is Professor<br/>     19 Fagal's written defense to President Munley's<br/>     20 charges?<br/>     21 A. Well, it's his explanation.<br/>     22 Q. Okay. Did you review this document in<br/>     23 preparing for today's deposition?<br/>     24 A. I've seen it. I don't know -- I didn't</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 13</p> <p>1 Q. Do you know who made the comments on the<br/>     2 right side of the page?<br/>     3 A. No. Let me -- no.<br/>     4 Q. Okay. But you know that it wasn't you?<br/>     5 A. No, I can't really say.<br/>     6 Q. Okay. On the first paragraph, last<br/>     7 sentence, there's a sentence that begins, "Helen<br/>     8 knows FF casually." Do you see that?<br/>     9 A. Yeah. Yeah.<br/>     10 Q. And then it says, "Some of her<br/>     11 conversations with him have been, quote, strange, but<br/>     12 the relationship has been collegial." Do you<br/>     13 remember Helen explaining what she meant by having<br/>     14 strange conversations with Professor Fagal?<br/>     15 A. No, I don't remember. I don't remember<br/>     16 if she expounded on that.<br/>     17 Q. If you look down at the bottom of this<br/>     18 page, it says, "5/3," which I guess is for May 3rd,<br/>     19 "AHC meets with HR and Sister Gail." Do you -- and<br/>     20 AHC means ad hoc committee, correct?<br/>     21 A. Correct.<br/>     22 Q. And do you remember meeting with HR and<br/>     23 Sister Gail?<br/>     24 A. I know we did. That's about all I</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 Povse-10.<br/>     2 (Povse-10, E-mail Bates No. DEF00245, is<br/>     3 received and marked for identification.)<br/>     4 Q. Why don't you briefly review this,<br/>     5 Mr. Povse, and let me know if you recognize it.<br/>     6 A. Yeah, I guess I recognize it. It's --<br/>     7 I'm sure.<br/>     8 Q. Do you remember sending the e-mail on<br/>     9 June 29, 2012, at 12:08 p.m. to Dr. Dunleavy?<br/>     10 A. No, I don't remember it, but I'm sure I<br/>     11 did.<br/>     12 Q. Do you remember receiving the e-mail<br/>     13 above it from Dr. Dunleavy?<br/>     14 A. I don't remember, but, again, it's in<br/>     15 front of me.<br/>     16 Q. You don't have any reason to doubt that<br/>     17 this is authentic?<br/>     18 A. Right, right.<br/>     19 MR. COHEN: I'd like to take O'Brien-14<br/>     20 and also mark this as Povse Exhibit 11.<br/>     21 (Povse-11, E-mail dated July 2, 2012,<br/>     22 with attachment, Bates Nos. DEF001515-521, is<br/>     23 received and marked for identification.)<br/>     24 Q. Do you recognize this e-mail and the<br/>       MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 32</p> <p>1 Q. Do you recognize this document and the<br/>     2 attachment to it?<br/>     3 A. Yeah.<br/>     4 Q. This is another copy of your committee's<br/>     5 review, correct?<br/>     6 A. Um-hum.<br/>     7 Q. But there are no edits here. Do you see<br/>     8 that?<br/>     9 A. Um-hum.<br/>     10 Q. Do you know whether this was the final<br/>     11 version of your review or not?<br/>     12 A. No.<br/>     13 Q. Do you know if -- do you remember<br/>     14 signing a hard copy version of your review, your<br/>     15 committee's review?<br/>     16 A. I don't remember. I would think that I<br/>     17 did, but I don't remember. I would think that we<br/>     18 signed off on it.<br/>     19 MS. PEET: If you don't know, the answer<br/>     20 is you don't know.<br/>     21 A. I don't know.<br/>     22 Q. Would it be fair to say, Mr. Povse, that<br/>     23 your committee reviewed whether Professor Fagal's<br/>     24 termination was proper?<br/>       MAGNA LEGAL SERVICES</p>  |
| <p style="text-align: right;">Page 31</p> <p>1 attachment?<br/>     2 A. Yeah, I recognize it.<br/>     3 Q. And the attachment is your committee's<br/>     4 review of Sister Anne's decision to terminate<br/>     5 Professor Fagal's employment, correct?<br/>     6 A. This attachment here?<br/>     7 Q. Yes.<br/>     8 A. Yes.<br/>     9 Q. And do you know if this is the final<br/>     10 version? Because it appears to me that there's still<br/>     11 track changes here. Do you know what I mean by track<br/>     12 changes?<br/>     13 A. No.<br/>     14 Q. If you see the edits, like the lines on<br/>     15 the left?<br/>     16 A. Um-hum.<br/>     17 Q. Do you know if this was the final<br/>     18 version?<br/>     19 A. I can't tell you.<br/>     20 MR. COHEN: Okay, let's take O'Brien-15<br/>     21 and mark this as Povse-12, please.<br/>     22 (Povse-12, E-mail dated July 5, 2012,<br/>     23 with attachment, Bates Nos. DEF001585-590, is<br/>     24 received and marked for identification.)<br/>       MAGNA LEGAL SERVICES</p>   | <p style="text-align: right;">Page 33</p> <p>1 A. Yes.<br/>     2 Q. Would it also be fair to say that your<br/>     3 committee reviewed whether Professor Fagal's<br/>     4 suspension was proper?<br/>     5 A. Yes.<br/>     6 Q. In this document that we were just<br/>     7 looking at, the review of President Munley's<br/>     8 decision, do you know whether it mentions your<br/>     9 analysis of Professor Fagal's suspension?<br/>     10 MS. PEET: Objection to the form.<br/>     11 A. What's the question?<br/>     12 Q. Does this review contain any analysis<br/>     13 about whether Professor Fagal's suspension was<br/>     14 appropriate?<br/>     15 A. I don't know. I'd have to look through<br/>     16 this. I'd have to read it thoroughly.<br/>     17 Q. Okay. If it's not in there, would it be<br/>     18 fair to say that it wasn't memorialized?<br/>     19 MS. PEET: Objection.<br/>     20 A. No.<br/>     21 Q. If the suspension was reviewed, would it<br/>     22 be odd for it not to be mentioned in your review?<br/>     23 MS. PEET: Objection,<br/>     24 mischaracterization of testimony. He just testified<br/>       MAGNA LEGAL SERVICES</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 that it was reviewed.<br/>     2 A. I'm getting confused here.<br/>     3 MS. PEET: Exactly. That's what he's<br/>     4 trying to do and I don't want you to get confused.<br/>     5 A. Ask me that question.<br/>     6 Q. We'll skip ahead.<br/>     7 Before your committee convened to review<br/>     8 Professor Fagal's discipline, do you recall that<br/>     9 there was another committee, a faculty grievance<br/>     10 committee, that also reviewed parts of Professor<br/>     11 Fagal's discipline?<br/>     12 A. Yeah.<br/>     13 MS. PEET: Objection to the form.<br/>     14 Q. And what was your understanding of what<br/>     15 the first committee did?<br/>     16 A. It was the procedure that they were<br/>     17 looking at of the events, and I can't really say<br/>     18 that, first of all, I have a memory of exactly what<br/>     19 their job was or duties were. I know that we did<br/>     20 meet with Erin and got more information as to their<br/>     21 committee and what they were charged with.<br/>     22 Q. Coming back to this last exhibit with<br/>     23 the review of President Munley's decision --<br/>     24 MS. PEET: I'm sorry, which exhibit is<br/> <b>MAGNA LEGAL SERVICES</b></p> | <p style="text-align: right;">Page 36</p> <p>1 say that the words were probably created, formulated,<br/>     2 by both Helen and Ed, because they had more talent in<br/>     3 that department, but I certainly agreed with anything<br/>     4 and everything that's -- that's in this document. We<br/>     5 are mindful of the potential perceived threat to<br/>     6 academic freedom when a speech violation leads to<br/>     7 revocation of tenure. I mean, it's pretty obvious<br/>     8 that, you know, that's pretty thin ice. That's scary<br/>     9 stuff right there. And we were certainly mindful of<br/>     10 it.</p> <p>11 Q. Would you say that Drs. Bittel and<br/>     12 O'Brien were more heavily involved in the committee's<br/>     13 deliberations than you were?</p> <p>14 MS. PEET: Objection to the form.</p> <p>15 A. They put it into words, I think, better<br/>     16 than I did, but our sentiments were the same. We<br/>     17 were in full agreement with each other.</p> <p>18 Q. Did you feel -- let me ask it this way:<br/>     19 Do you wish that you had never served on this ad hoc<br/>     20 committee?</p> <p>21 MS. PEET: Objection to form.</p> <p>22 A. No. No.</p> <p>23 Q. Do you feel like you were under pressure<br/>     24 to make a particular decision?<br/> <b>MAGNA LEGAL SERVICES</b></p> |
| <p style="text-align: right;">Page 35</p> <p>1 it again, Povse-12?<br/>     2 MR. COHEN: Yes.<br/>     3 Q. Can you turn to part A of the decision,<br/>     4 the one that begins with, "We acknowledge that"? Do<br/>     5 you see that?<br/>     6 A. Um-hum.<br/>     7 Q. And further down, do you see the<br/>     8 sentence that says, "We are mindful of the potential<br/>     9 or perceived threat to academic freedoms when a<br/>     10 speech violation leads to revocation of tenure"?</p> <p>11 A. Um-hum.<br/>     12 Q. And you had a role in -- would it be<br/>     13 fair to say you had a role in generating this<br/>     14 document?<br/>     15 A. Um-hum.<br/>     16 Q. What did --<br/>     17 MS. PEET: Keep your answers verbal,<br/>     18 make sure. Is that a yes or a no?<br/>     19 A. Yes.<br/>     20 Q. Yes, you did have a role?<br/>     21 A. Yes.<br/>     22 Q. What did you mean by this sentence, "We<br/>     23 are mindful of the potential" --<br/>     24 A. I would -- first of all, I would have to<br/> <b>MAGNA LEGAL SERVICES</b></p>  | <p style="text-align: right;">Page 37</p> <p>1 A. No. No.<br/>     2 Q. And is that because you were already<br/>     3 tenured at the time?<br/>     4 A. No, no. No, I -- no.<br/>     5 Q. You had no fear that a decision<br/>     6 against -- even if it did not support President<br/>     7 Munley's decision would lead to adverse consequences?<br/>     8 A. No.<br/>     9 Q. Why not?<br/>     10 A. I don't know. It didn't -- it didn't<br/>     11 enter my mind. I don't know. Fearless.<br/>     12 Q. You were fearless? That's a good<br/>     13 answer.<br/>     14 Looking back on it, do you think it<br/>     15 would have been appropriate to have more fear that<br/>     16 deciding -- making a decision that did not support<br/>     17 President Munley would have adverse consequences?<br/>     18 MS. PEET: Objection.<br/>     19 A. No. And it really never entered my<br/>     20 mind.<br/>     21 Q. You're aware that your committee had to<br/>     22 consist -- was required to consist of tenured<br/>     23 professors, right?<br/>     24 A. Yes.<br/> <b>MAGNA LEGAL SERVICES</b></p>  |

# EXHIBIT W

Faculty Senate Ad Hoc Hearing Committee (Dr. Helen Bittel, Dr. Edward O'Brien, Mr. Mathew Povse)

**Review of Sister Anne Munley's Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal**

2 July 2012

After thorough investigation, reflection, and deliberation, we---the Faculty Senate Ad Hoc Hearing Committee---are in agreement with Sister Anne Munley's decision to revoke the tenure and terminate the employment of Dr. Frederick Fagal.

A. We acknowledge that revocation of tenure is one of the most extreme actions that an academic administrator can take and that it has very serious implications both for the individual whose employment is terminated and for the entire university community. The traditions of academic freedom require a strong defense of the rights of tenured faculty members to speak openly, explore their work, and participate in faculty governance without fearing reprisal. We maintain that academic freedom is the cornerstone of our work as faculty members and have, throughout our deliberations, sought to ensure that its principles are upheld, both in Dr. Fagal's case and for all Marywood faculty in years to come. We are mindful of the potential or perceived threat to academic freedoms when a speech violation leads to revocation of tenure. Thus in rendering our decision, we maintain that Dr. Fagal's is an extreme case and that his words and actions (specifically, his producing and sending out links to two YouTube videos to colleagues at Marywood) are not protected by the principles of academic freedom, as detailed below.

B. In coming to this decision, we have taken our charge very seriously, thoroughly researching the events leading to Dr. Fagal's dismissal, Dr. Fagal's personnel record over his years at Marywood, the *Marywood Policies and Procedures Manual (PPM)*, and relevant AAUP guidelines during our deliberations (see Appendix A for a listing of the AAUP documents we reviewed). We believe that we gave this case the open-minded, careful consideration and thorough investigation that we would want for ourselves or for any of our colleagues.

C. Dr. Fagal was given the opportunity to explain his video in his meeting with Sister Anne Munley and Drs. Patricia Dunleavy and Michael Foley on 23 January 2012. Dr. Fagal appears to have not acknowledged any errors in judgment on his part at this meeting and left little room for pursuing progressive discipline or a mediated solution to this situation. The Faculty Grievance Committee has already determined that Sister Anne Munley followed appropriate procedure in moving directly to termination.

D. In rendering our decision, we carefully considered the four charges outlined by Sister Anne Munley in her Recommendation for Termination memo (8 February 2012) as well as Dr. Fagal's response to those charges (Letter to the Ad Hoc Committee, 6 May 2012).

**Charge #1: Breach of Tenure Agreement.** The Tenure policy outlined in the *PPM* states that tenure "will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or professional incompetence." We agree that Dr. Fagal's action does constitute "a

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flagrant abuse of academic freedom" because it includes gratuitous and malicious personal attacks well beyond the spirit and limits of academic freedom. We discuss this at greater length below, under "Charge #4"

We also agree, however, that according to the policy, these are not the only three reasons why tenure may be revoked. The wording of the policy pointedly uses the phrase "*may* include" [Italics ours] in order to allow for other rare and extreme---but very "grave"---circumstances in which an individual's actions seriously injure the community. We are in agreement that Sister Anne Munley is justified in saying that Dr. Fagal's actions constitute such an injury.

While it is difficult to precisely define what constitutes a violation of Core Values at Marywood, the egregious nature of Dr. Fagal's video parodies and their gratuitous personal attacks are, in the view of this committee, sufficiently extreme to justify the actions taken by Sister Anne Munley.

The AAUP, which fiercely opposes campus speech codes, acknowledges that "[t]he governing board and the administration have a special duty not only to set an outstanding example of tolerance but also to challenge boldly and condemn immediately serious breaches of civility." ("On Freedom of Expression and Campus Speech Codes, 10/26/06, p.38) Dr. Fagal's video, in both its general premise and in the specific insults directed at individual Executive Officers, is, in the opinion of this committee, indeed such a breach.

**Charge #2: Violation of Civil Rights Policy.** We question whether all of the insults to Executive Officers qualify as Civil Rights violations in terms of how the Civil Rights Policy relates to specific protected groups. However, we do think that Dr. Fagal's portrayal of Alan Levine, a Jewish man, as a Nazi officer might be interpreted as anti-Semitic, regardless of whether this was Dr. Fagal's intention. It is, for example, analogous to portraying an African American as a Klansman in a video or document intended to insult that person. Thus it could qualify as a violation of our Civil Rights Policy, since religion and ethnicity are protected categories. While Dr. Fagal is correct in saying that he was not given an opportunity to respond to this point, there might have been one if he had answered Sister Anne Munley's questions on 23 January 2012 or if he had sought out additional opportunities to explain his actions in a subsequent meeting.

**Charge #3: Violation of Marywood's Conditions of Computer Use Policy.** The committee does not have sufficient information from Sister Anne Munley's complaint to adjudicate this violation, nor is determining copyright infringement within our expertise. The onus for providing evidence here rests with the administration in needing to prove that such violations occurred and not with Dr. Fagal in terms of proving that he did not engage in such violations. We therefore cannot support this statement of violation.

**Charge #4: Violation of Academic Freedom Policy, Professional Ethics Policy, and the University's Mission and Core Values as well as the principles of collegiality.**

As we have indicated above, under "Charge #1," we do not believe that Dr. Fagal's video is protected by academic freedom because it is neither part of an academic exercise (teaching- or research-related) nor produced and disseminated in the context of such a scholarly pursuit. Moreover, it is not informed by legitimate academic research and does not abide by the professional and scholarly standards of Dr.

Fagal's discipline (or any other academic discipline). While the initial FIRE incident (the posters being taken down last fall) that sparked Dr. Fagal's anger did take place alongside and with relevance to his course (SSCI 201), this is not the case with the Jan 13 video. Dr. Fagal has the right to protest Marywood administrative actions, but to receive the protection of academic freedom, he would need to limit his analysis to an examination of the FIRE incident rather than bringing in personal attacks on individual Executive Officers. His critique of the Marywood administration could have been achieved without these attacks on the videos with their gratuitous and malicious elements that speak to his anger but do not illuminate our understanding of the issue of free speech and constitutionality. Moreover, Dr. Fagal could have pursued his complaint through other channels and could have criticized the university's actions in appropriate ways that would be protected under academic freedom.

Joan DelFattore, author of *Knowledge in the Making: Academic Freedom and Free Speech in America's Schools and Universities*, makes a clear distinction between academic freedom and speech protected under the first amendment: "Academic freedom as a professional norm upholds the authority of the faculty as a whole to establish and maintain academic standards and to share in institutional governance. It poses no obstacle to penalizing individual faculty members for scholarly speech that is judged to be professionally incompetent, even if the First Amendment would protect the expression of those same ideas by a citizen on the street. The applications are different because the fundamental purposes are different." (*Chronicle of Higher Education*, "To Protect Academic Freedom, Look Beyond the First Amendment," 31 Oct 2010)

We agree that the videos constitute harassment of the individuals who are impugned therein and therefore agree that Dr. Fagal has violated our Professional Ethics policy (PPM) as well as our mission and values.

In keeping with the recommendations of the AAUP, we do not, however, think that violating principles of collegiality in itself should be a criterion for revoking tenure. (See "On Collegiality as a Criterion for Faculty Evaluation").

**Conclusion:** We believe that Sister Anne Munley's termination of Dr. Fagal's employment and tenure is an extreme decision justified by the extreme nature of Dr. Fagal's behavior. We maintain that revocation of tenure at Marywood has been and ought to continue to be a very rare event. Tenure serves to ensure that faculty can speak their truths without reprisal, whether in the context of academic freedom or of faculty governance. This is critically important to the health of a university. However, Dr. Fagal was not operating in either of these contexts, and his video is outside the bounds of legitimate academic purpose. Moreover, Dr. Fagal's egregious violation of our core values, especially the value of respect, has caused grave and irreparable harm to our community.

Dr. Helen Bittel, Chair of Committee, Associate Professor

Dr. Edward O'Brien, Professor

Mr. Mathew Povse, Assistant Professor

#### Appendix A. AAUP Documents Consulted in Our Review

The committee initially identified a number of AAUP documents that seemed relevant to our deliberations and then contacted AAUP with this listing of documents and asked if there were other AAUP documents that might be relevant to our charge. In our contact with AAUP we identified the nature of our committee review in general terms and not with reference to any specific details of the current case. Below is a listing of the final list of AAUP documents reviewed as part of our committee deliberations.

1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments

1958 Statement on Procedural Standards in Faculty Dismissal Proceedings

Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions (2011, full report and executive summary)

On Collegiality as a Criterion for Faculty Evaluation (1999)

On Freedom of Expression and Campus Speech Codes (1994)

On the Relationship of Faculty Governance to Academic Freedom (1994)

Post-Tenure Review: An AAUP Response (1999)

Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments (1989 revision)

Recommended Institutional Regulations on Academic Freedom and Tenure (1940-2009)

# EXHIBIT X



# Marywood UNIVERSITY

OFFICE OF THE PRESIDENT

MARYWOOD UNIVERSITY  
SCRANTON, PA 18509-1598  
TEL: (570) 348-6231  
FAX: (570) 340-6014  
EMAIL: ANNEMUNLEY@MARYWOOD.EDU  
[www.marywood.edu](http://www.marywood.edu)

✓HR

July 13, 2012

Dr. Frederick F. Fagal, Jr.  
17 East Lake Street  
Skaneateles, NY 13152

Dear Dr. Fagal,

I have received and reviewed the report of the independent tenured faculty committee that was convened at your request under the Progressive Discipline Policy to appeal my decision to suspend you and to terminate your employment and tenure. This was the second independent tenured faculty review accorded to you; both faculty committees concurred with my decisions.

My decision to terminate your employment with Marywood University and your tenure effective April 3, 2012 stands.

I wish you good luck in your future endeavors.

Sincerely,

*Sister Anne Munley, IHM*

Sister Anne Munley, IHM  
President



# EXHIBIT Y

**THE CENTER FOR  
FORENSIC ECONOMIC STUDIES**



Economic & Statistical Analysis

CFES@CFES.COM WWW.CFES.COM

EXPERT ANALYSIS AND TESTIMONY SINCE 1980

Reply to Philadelphia Office

Chad L. Staller, J.D., MBA, MAC, CVA  
*President*

James Markham, Ph.D., J.D., CPCU  
*Senior Economist*

Bernard F. Lentz, Ph.D.  
*Senior Economist*

David R. Adams  
*Senior Economist*

Stephen M. Dripps, M. Fin., CVA  
*Senior Economist / Manager*

Brian Conley  
*Senior Economist*

Adam Gilham  
*Economist*

November 18, 2016

Stephanie J. Peet, Esquire  
Jackson Lewis PC  
Three Parkway  
1601 Cherry Street, Suite 1350  
Philadelphia, PA 19102-1317

Re: *Frederick F. Fagal, Jr. v. Marywood University*

Dear Ms. Peet:

At your request, we assess the economic loss suffered by Frederick F. Fagal, Jr. as a result of a separation of employment with Marywood University (hereafter "Marywood") which occurred on April 3, 2012. We reserve the right to amend this report upon receipt of any additional relevant information.

**I. DOCUMENTS REVIEWED**

- Amended Complaint and Answer
- Objections and Answers to Defendant's First Set of Interrogatories to Plaintiff
- June 7, 2016 deposition of Frederick F. Fagal, Jr., with Exhibits
- Dr. Fagal's LinkedIn Profile as of November 9, 2016
- Dr. Fagal's Payroll Records, 2007 to 2010
- Dr. Fagal's resume
- Dr. Fagal's mitigation records
- "Preliminary Calculation of Damages"
- Dr. Fagal's W-2 Wage and Tax Statements, 2011 and 2012
- November 2, 2016 report of Sobel Tinari Economics Group (hereafter "STEG")

Any additional documents used in preparation of this report, such as professional and governmental publications, are fully cited herein.

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This report has been prepared for the use of counsel in the instant matter. Given the personal, financial and/or medical information contained herein, any transmission, copy, or utilization of this report or material contained herein is strictly prohibited without the written consent of the Center for Forensic Economic Studies.

## II. BACKGROUND

Frederick F. Fagal, Jr. was born on [REDACTED] 1946. At the time of the separation, he was 66.1 years of age. According to Dr. Fagal's June 7, 2016 deposition, he began teaching at Marywood on a part-time basis in 1985 or 1986 before joining the faculty full-time in the fall of 1987, and became a tenured professor in the fall of 1994.<sup>1</sup> Subsequent to his separation, Dr. Fagal began seeking alternate employment in the fall of 2012 by looking at newspaper advertisements in the Syracuse newspaper; he also consulted Inside Higher Education and the Chronicle of Higher Education.<sup>2</sup> Dr. Fagal estimates he has spent, on average, less than one hour per week seeking alternate employment; he has worked as a lifeguard and swimming instructor at the YMCA.<sup>3</sup> Dr. Fagal feels he is qualified to teach introductory United States history, introductory micro/macroeconomics, introductory statistics, and introductory social science.<sup>4</sup> Dr. Fagal holds a Master of Arts in Economics from Cornell University, a Master of Arts in Education from Syracuse University, and a Ph.D. in Social Studies Education from Syracuse University.<sup>5</sup> Dr. Fagal is married with one adult child and resides in Skaneateles, New York.<sup>6</sup>

## III. EARNING HISTORY

Dr. Fagal's recent earning history from Marywood, as reported on his Social Security Earnings Record and W-2 Wage and Tax Statements, is shown in Table A below:

| <b>Table A: Fagal Earning History</b> |                 |
|---------------------------------------|-----------------|
| <b>Year</b>                           | <b>Earnings</b> |
| 2008                                  | 68,128          |
| 2009                                  | 71,795          |
| 2010                                  | 73,626          |
| 2011                                  | 74,323          |
| 2012                                  | 52,172          |

Dr. Fagal was paid through the end of his contract in August 2012.<sup>7</sup> Subsequent to the separation, Dr. Fagal reported minimal earnings from the YMCA.

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<sup>1</sup> Id., pp. 33-37.

<sup>2</sup> Id., pp. 339-340.

<sup>3</sup> Id., pp. 342-343.

<sup>4</sup> Id., pp. 23-25, 34.

<sup>5</sup> Id., pp. 20-22.

<sup>6</sup> pp. 14-17.

<sup>7</sup> STEG report, p. 3.

#### IV. JOB SEARCH EFFORTS

As stated earlier, Dr. Fagal testified he began searching for alternate employment in the fall of 2012 by looking at newspaper advertisements in the Syracuse newspaper and consulting Inside Higher Education and the Chronicle of Higher Education, spending less than one hour per week seeking alternate employment. Dr. Fagal's mitigation records primarily consist of printed job listings emailed to him, a cover letter expressing an interest in a part-time position at Onondaga Community College, and an application for an adjunct professor position with the State University of New York (hereafter "SUNY"). In his deposition, Dr. Fagal confirmed the SUNY application was the only application he submitted to any college or university since his separation.<sup>8</sup> Dr. Fagal also mentioned the circumstances of his separation from Marywood in his cover letter to Onondaga Community College and his resume. In addition, Dr. Fagal's LinkedIn page references his position with Marywood as a "Re Fired Associate Professor of Economics."

The U.S. Department of Labor, Employment and Training Administration - U.S. Employment Service created a list of "Job Search Guide Strategies for Professionals" in searching for employment.<sup>9</sup> This job search guide was originally released by the U.S. Department of Labor in 1993 and is currently posted and relied upon by the New York Department of Labor. The Department of Labor job search guide states that:

Most job seekers probably spend too much of their time using formal methods, not realizing there are alternative methods. You must carry out an active, as opposed to a passive, job search. It is not enough to respond to leads from want ads or employment agencies. Carrying out an active search allows you to control the job search process and opens up many more job opportunities.

The United States Department of Labor study indicated that about two thirds of jobs are obtained using two "informal" methods: personal contacts (networking) and direct employer contacts. It is further stated that only one-third of available openings are obtained using "formal" methods like want ads, employment agencies, hiring halls, and civil service tests. It is also indicated that the use of the Internet can become addicting; however, the Internet should be only one of the tools used; not the only tool. According to this guide, a job search should consist of:

- networking,
- sending resumes or letters to target companies,
- contacting by phone target companies,
- visiting in-person the target companies,
- responding to classified advertising in newspapers or trade journals,
- using private employment agencies and executive search firms (head-hunters),
- using public employment agencies,
- using Internet job banks.

In order to illustrate the amount of job search activity which could be considered reasonable, we note that according to the Pennsylvania Department of Labor and Industry, individuals are

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<sup>8</sup> p. 354.

<sup>9</sup> <http://www.labor.state.ny.us/careerservices/findajob/tableco.shtm>

required at a minimum to apply for two jobs and participate in one work search activity each week in order to maintain eligibility for unemployment benefits. Work search activities include:

- Attending a job fair.
- Searching positions posted on the JobGateway® system or Internet job banks.
- Creating or posting a résumé in the JobGateway® system or post a résumé in other résumé-posting services.
- Contacting colleagues, former co-workers or other individuals in similar professions or occupations to make known your availability for employment or obtain information about available positions, prospective employers or other employment opportunities.
- Utilizing an employment agency, employment registry or school placement service.
- Taking a civil service test or other pre-employment test.
- Participating in a program or activity offered through the Pennsylvania CareerLink® system.

Individuals may substitute a third weekly job application or a job interview in lieu of work search activity.<sup>12</sup> The New York Department of Labor also has a requirement of three job contacts per week in order to maintain eligibility for unemployment benefits.<sup>13</sup>

The Pennsylvania Department of Workforce Development provides numerous resources for Pennsylvania residents on securing employment.<sup>14</sup> Pennsylvania's job search services include PA CareerLink, which "provides help finding a job, looking for a better job, receiving job training and seeking vocational rehabilitation services." The New York State Department of Labor also provides numerous resources for New York residents on securing employment, including New York State Career Centers.<sup>15</sup>

Additionally, The websites Scholarly Hires<sup>16</sup>, Academic Careers<sup>17</sup>, and Higher Ed Jobs<sup>18</sup> are websites dedicated to job placement for higher education.

To date, we have not reviewed any information indicating that Dr. Fagal availed himself of any of these resources. Given the foregoing details of a thorough job search, and Dr. Fagal's testimony and mitigation records, it is our opinion that his job search was not exhaustive or diligent.

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<sup>12</sup> Pennsylvania Unemployment Compensation Handbook, p. 7;  
<http://www.uc.pa.gov/Documents/UCP%20Forms/ucp-1.pdf>

<sup>13</sup> <https://www.labor.ny.gov/ui/claimantinfo/work-search.shtm#3>

<sup>14</sup> [http://www.paworkforce.state.pa.us/portal/server.pt/community/job\\_seekers/12886](http://www.paworkforce.state.pa.us/portal/server.pt/community/job_seekers/12886)

<sup>15</sup> <https://labor.ny.gov/careerservices/CareerServicesIndex.shtm>

<sup>16</sup> <http://www.scholarlyhires.com>

<sup>17</sup> <http://www.academiccareers.com>

<sup>18</sup> <http://www.higheredjobs.com>

## V. RELEVANT UNEMPLOYMENT AND EARNINGS STATISTICS

The number of positions, mean earnings, and median earnings for workers classified postsecondary teachers in Business, Mathematical Science, Economics and History in metropolitan areas near Dr. Fagal's residence, according to the Bureau of Labor Statistics' May 2012 *Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates*, is shown in Table B below:<sup>19</sup>

| Table B: Employment and Earnings Near Dr. Fagal's Residence |  |              |               |               |  |
|---|--|--------------|---------------|---------------|--|
| Metropolitan Area   | Occupation                                   | Positions    | Mean          | Median        |  |
| Rochester, NY   | Business Teachers, Postsecondary             | 290          | 103,380       | 91,940        |  |
| Rochester, NY   | Mathematical Science Teachers, Postsecondary | 240          | 88,540        | 70,320        |  |
| Rochester, NY   | Economics Teachers, Postsecondary            | 90           | 129,940       | 109,360       |  |
| Rochester, NY   | History Teachers, Postsecondary              | 140          | 113,700       | 89,470        |  |
| Syracuse, NY  | Business Teachers, Postsecondary             | 600          | 78,000        | 65,060        |  |
| Syracuse, NY  | Mathematical Science Teachers, Postsecondary | 220          | 67,440        | 60,020        |  |
| Syracuse, NY  | Economics Teachers, Postsecondary            | 90           | 88,510        | 74,440        |  |
| Syracuse, NY  | History Teachers, Postsecondary              | 110          | 67,580        | 66,790        |  |
| Utica-Rome, NY  | Economics Teachers, Postsecondary            | 40           | 99,610        | 98,520        |  |
| Utica-Rome, NY  | History Teachers, Postsecondary              | 40           | 89,940        | 98,200        |  |
| Scranton/Wilkes-Barre, PA                                   | Mathematical Science Teachers, Postsecondary | 160          | 77,540        | 69,440        |  |
| Scranton/Wilkes-Barre, PA                                   | Economics Teachers, Postsecondary            | 40           | 80,600        | 75,380        |  |
| Scranton/Wilkes-Barre, PA                                   | History Teachers, Postsecondary              | 70           | 76,630        | 73,020        |  |
| <b>Total Employment/Weighted Average Earnings</b>           |  | <b>2,130</b> | <b>86,599</b> | <b>74,789</b> |  |

The median tenure of employees in educational services in January 2012 was 4.3 years.<sup>20</sup> By implication, approximately 248 postsecondary teaching positions in Business, Mathematical Science, Economics and History were available and subsequently filled in the metropolitan areas shown in Table B in 2012.<sup>21</sup> The mean and median earnings of these positions are comparable, if not greater, than Dr. Fagal's earnings with Marywood.

In April 2012, the median duration of unemployment for individuals in service occupations was 20.5 weeks and the median duration of unemployment for individuals in the education and health services industry was 26.4 weeks.<sup>22</sup>

<sup>19</sup> *Occupational Employment Statistics*, Bureau of Labor Statistics, <http://www.bls.gov/oes>

<sup>20</sup> *Employee Tenure in 2010*, Bureau of Labor Statistics, <http://www.bls.gov/cps>

<sup>21</sup>  $2,130/2/4.3 = 248$

<sup>22</sup> *Employment and Earnings*, Bureau of Labor Statistics, <http://www.bls.gov/opub/ee>

## VI. CURRENT EMPLOYMENT OPPORTUNITIES

To provide an illustration of potential employment opportunities that recently existed for Dr. Fagal, we conducted a limited internet job search<sup>23</sup> on November 9, 2016 for professor positions in the areas he identified: Economics, Social Science, U.S. History, and Statistics. The results of this search are shown in Table C below:

| Table C: Job Listings for Economics Professor Positions |   |                                  |                      |
|---|---|----------------------------------|----------------------|
| Date  | Job Title   | Employer                         | Location             |
| 7/23/2016   | Assistant/Associate Professor of Statistics             | Skidmore College                 | Saratoga Springs, NY |
| 8/26/2016   | Assistant Professor -- History                          | St. Bonaventure University       | St. Bonaventure, NY  |
| 9/1/2016  | Assistant Professor - Public Economics                  | Syracuse University              | Syracuse, NY         |
| 9/14/2016   | Assistant Professor - Probability/Statistics            | Farmingdale State College        | Farmingdale, NY      |
| 9/22/2016   | Assistant, Associate or Full Professor - Economics      | Cornell University               | Ithaca, NY           |
| 9/27/2016   | Assistant Professor - Economics                         | Columbia University              | New York, NY         |
| 9/27/2016   | Assistant Professor - Statistics                        | Syracuse University              | Syracuse, NY         |
| 9/30/2016   | Tenure-stream position - Microeconomics                 | Colgate University               | Hamilton, NY         |
| 10/3/2016   | Assistant or Associate Professor - Economics            | CUNY John Jay                    | New York, NY         |
| 10/5/2016   | Tenure-track faculty - Economics                        | Bucknell University              | Lewisburg, PA        |
| 10/10/2016  | Assistant Professor - Economics                         | Farmingdale State College        | Farmingdale, NY      |
| 10/14/2016  | Part-time Faculty, Section Lead for MBA, Microeconomics | Syracuse University              | Syracuse, NY         |
| 10/14/2016  | Assistant Professor - Economics                         | St. Lawrence University          | Canton, NY           |
| 10/14/2016  | Faculty Position in History                             | Hofstra University               | Hempstead, NY        |
| 10/17/2016  | Auxiliary Professor in Economics                        | Molloy College                   | Rockville Centre, NY |
| 10/17/2016  | Assistant Professor - Economics                         | Lafayette College                | Easton, PA           |
| 10/19/2016  | Economics, Full-time Tenure track faculty               | Onondaga Community College       | Syracuse, NY         |
| 10/19/2016  | Assistant Professor of Economics - Tenure Track         | Washington & Jefferson College   | Washington, PA       |
| 10/21/2016  | Assistant Professor of Economics                        | SUNY at Cortland                 | Cortland, NY         |
| 10/24/2016  | Assistant Professor of History                          | SUNY College at Old Westbury     | Old Westbury, NY     |
| 10/27/2016  | Assistant Professor of Economics                        | SUNY College at Old Westbury     | Old Westbury, NY     |
| 10/31/2016  | Assistant Professor in Development Economics            | Cornell University               | Ithaca, NY           |
| 10/31/2016  | Adjunct US History - Summer 2017                        | Genesee Community College        | Batavia, NY          |
| 11/3/2016   | Lecturer, 3-year position, Economics                    | Cornell University               | Ithaca, NY           |
| 11/14/2016  | Assistant Professor - US History                        | CUNY LaGuardia Community College | New York, NY         |

As shown in Table C, we found 25 positions currently available. Had the opportunities available for such positions been cataloged from the time of the separation, it is likely that a greater number of opportunities would have been available to Dr. Fagal.<sup>24</sup>

<sup>23</sup> A more complete job search would consist of seeking job opportunities through multiple forums, including attending college job fairs, networking, sending resumes or letters to target companies, colleges/universities contacting by phone target companies, colleges and universities, visiting in-person the target companies, colleges/universities, responding to classified advertising in newspapers or trade journals, using private employment agencies and executive search firms (head-hunters), using public employment agencies, and using Internet job banks (<http://labor.ny.gov/careerservices/findajob/tableco.shtml>)

<sup>24</sup> There is no economic data to suggest that a similar number of jobs and potential opportunities were not available at the time of Dr. Fagal's separation in April 2012.

## VII. ECONOMIC LOSS ANALYSIS

Dr. Fagal's job search effort, consisting of one documented cover letter and one documented employment application, can be considered minimal at best. Dr. Fagal did not avail himself of the services of either the Pennsylvania or New York Departments of Labor, nor did he meet their minimum criteria for a reasonable job search. Furthermore, Dr. Fagal makes mention of the circumstances of his separation from Marywood in his one documented cover letter, in his resume, and alludes to same on his LinkedIn page.

A detailed labor market review indicates that in 2012 approximately 248 postsecondary teaching positions in Business, Mathematical Science, Economics and History were likely available and subsequently filled in the metropolitan areas closest to Dr. Fagal's home. Unemployment data indicates that individuals with similar characteristics to Dr. Fagal had a median duration of unemployment ranging from 20.5 to 26.4 weeks. Our limited November 2016 job search found openings which could and should have been pursued by Dr. Fagal. Had Dr. Fagal conducted a diligent job search upon his separation, he should have secured alternate employment with comparable compensation by the beginning of the following school year. We conclude that Dr. Fagal's mitigation efforts were not reasonable or diligent, and that Dr. Fagal failed to mitigate his economic loss. Therefore, our estimate of economic loss is zero (\$0).

## VIII. COMMENTS RE: NOVEMBER 2, 2016 REPORT OF SOBEL TINARI ECONOMICS GROUP

We examined the report of STEG in this matter and disagree with several assumptions. STEG does not present any estimate of post-separation earnings. As discussed earlier, Dr. Fagal has a duty to mitigate his losses and search for comparable employment. As such, the STEG estimates should assume Dr. Fagal will be successful in this regard.

In addition, STEG reduces earnings by 5% to account for "job maintenance expenses", including transportation, clothing, meals outside the home, and other costs. Dr. Fagal likely incurred significant commuting expenses while working for Marywood, as he resides in Skaneateles, New York, 126 miles from Marywood. Assuming a daily commute to and from work for four days per week, 40 weeks per year, at the 2012 federal mileage reimbursement rate of 55.5 cents per mile,<sup>28</sup> Dr. Fagal incurred \$22,378 in annual commuting costs, approximately 29% of his earnings.<sup>29</sup> Therefore, STEG's estimates of job maintenance expenses are severely understated, leading to an overstated estimate of economic loss.

Last, STEG provides an estimate of excess taxes on a lump sum award. STEG's estimate of excess taxes is specific only to their damages estimate, and is not applicable to any other damages award. It is only appropriate for settlement purposes should the settlement amount equal STEG's estimate of damages. Estimates of excess taxes should only be made upon an award being made. Furthermore, STEG's estimate of excess taxes is based on effective tax rates, assuming the entire award is being taxed at one level.

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<sup>28</sup> <https://www.irs.gov/uac/irs-announces-2012-standard-mileage-rates-most-rates-are-the-same-as-in-july>

<sup>29</sup> \$22,378 = \$0.555/mile \* 126 miles/trip \* 2 trips/day \* 4 days/week \* 40 weeks/year

## IX. SUMMARY

As outlined in our report, the total economic loss equals \$0. Please do not hesitate to contact us if you have further questions.

All relevant documents as required by F.R.C.P. 26(a)(2)(B) are attached hereto as Appendix A.

Sincerely,

The Center for Forensic Economic Studies



Chad L. Staller, JD, MBA, MAC, CVA



James Markham, Ph.D., JD, CPCU

## **APPENDIX A**

THE CENTER FOR  
**FORENSIC ECONOMIC STUDIES**

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1608 Walnut Street - Suite 801, Philadelphia, Pennsylvania 19103 - (215) 546-5600 - FAX (215) 732-8158  
E-Mail Address: cfes@cfes.com

November 18, 2016

Stephanie J. Peet, Esquire  
Jackson Lewis P.C.  
Three Parkway  
1601 Cherry Street, Suite 1350  
Philadelphia, PA 19102-1317

Re: Frederick F. Fagal, Jr. v. Marywood University  
Our File # 1823

Dear Ms. Peet:

Our compensation rates for professional time and testimony are listed below:

|   |             |
|---|-------------|
| Professional time (Hourly)              | \$ 325      |
| Testimony/Deposition (Half Day Session) | \$ 2500     |
| Expenses                                | As Incurred |

We have not yet totaled the time invested in this matter. When that calculation is made we will then forward the total to you.

Sincerely,

The Center for Forensic Economic Studies



Chad L. Staller, J.D., M.B.A., M.A.C.  
President

CLS/da

THE CENTER FOR  
**FORENSIC ECONOMIC STUDIES**  
Research      Analysis      Litigation Support

1608 Walnut Street, Suite 801  
Philadelphia, Pennsylvania 19103



#### **Accreditation**

Certified Valuation Analyst (C.V.A.) by the National Association of Certified Valuation Analysts, 2007.

Certified Instructor by the National Institute of Trial Advocacy (NITA), 2013.

#### **Education**

Villanova University, Master of Accountancy, 2006.

Temple University, Fox School of Business & Management, Master of Business Administration, Certificate of Academic Excellence, Concentration in Business Administration, 2005.

Temple University's James E. Beasley School of Law, Juris Doctorate, Cum Laude, 2001.

Lehigh University, Bachelor of Science in Business and Economics, 1998.



#### **Chad Staller, J.D., M.B.A., M.A.C., C.V.A**

President, Senior Economist

800.966.6099 | 215.546.5600 | fax 215.732.8158  
cstaller@cfes.com

Chad L. Staller is president of the Center for Forensic Economic Studies. He has extensive experience working with both plaintiff and defense counsel in a wide variety of civil matters, quantifying loss sustained by many types of plaintiffs, including union members, state and federal employees, business owners and injured children. He regularly analyzes claims brought in employment-discrimination matters, quantifying back-pay damages, front-pay damages and lost benefits, and also frequently consults on commercial matters, analyzing lost-profit and business-interruption claims.

He serves on the faculty of Temple University's Beasley School of Law LL.M. in Trial Advocacy program and lectures regularly at Villanova University School of Law and Drexel University's Thomas R. Kline School of Law. Mr. Staller is a certified instructor through the National Institute of Trial Advocacy where he lectures to practicing lawyers in the area of forensic economics. He frequently presents seminars and speaks on forensic-economic topics at law firms, accounting continuing education seminars, and before professional organizations.

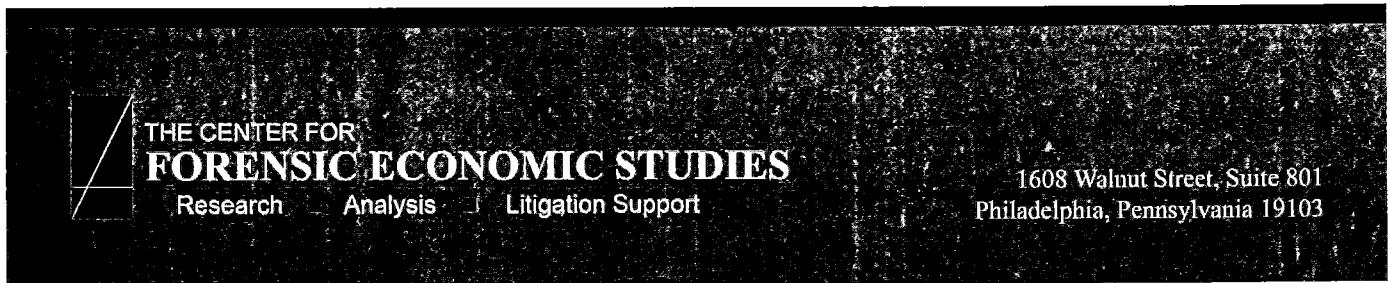
He received his Master of Business Administration, *with honors*, from the Fox School of Business and Management at Temple University. Mr. Staller also received his Juris Doctorate, *with honors*, from the Beasley School of Law at Temple University and his Master of Accountancy from Villanova University. He holds a C.V.A. through the National Association of Certified Valuation Analysts.

#### **Professional Organizations & Affiliations**

- American Economic Association
- National Association of Forensic Economics
- American Bar Association

#### **Awards and Honors**

- 2014 Honoree as a "Top 40 Under 40" for work as an Economic Damages Expert by NACVA and CTI.



## Professional Background

President and Senior Economist, the Center for Forensic Economic Studies, Philadelphia, Pennsylvania, concentrating on the analysis of, and testimony on, commercial damages (lost profits), personal-injury and wrongful-death damages and damages and liability in labor and employment matters (including FINRA arbitrations). July 2005 - present.

Law practice representing a wide range of clients, including major trucking companies and insurance firms. Served as lead attorney in many types of civil matters, including personal injury, product liability, premises liability, breach of contract, contract interpretation and trademark filings before the United States Trademark Office.

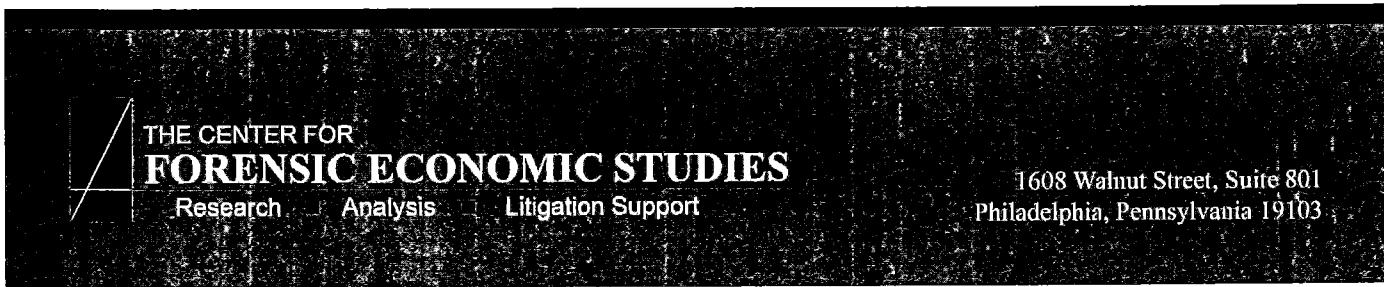
Law Clerk to Judge S. Michael Pincus, Circuit Court for Montgomery County, Maryland.

Research Assistant, Lehigh Valley Economic Development Corporation, Allentown, Pennsylvania. Developed a wage-analysis study showing which industries would be best suited to the Lehigh Valley region.

## Selected Engagements

### Commercial Disputes

- Evaluated economic loss relating to an alleged breach of contract involving a startup UPS franchise.
- Evaluated economic loss to a limousine company resulting from the destruction of a portion of its fleet.
- Evaluated economic loss relating to crop damage sustained by a commercial farm as a result of a housing developer's conduct.
- Evaluated economic loss sustained by real property owner as a result of a property manager's conduct.
- Evaluated economic loss stemming from an alleged breach of an employment contract with a medical practice.
- Evaluated economic loss sustained by a commercial property owner as a result of an alleged breach of contract.
- Evaluated economic loss sustained by an airline services company as a result an alleged breach of contract with the prior owner.
- Evaluated economic loss resulting from a disputed business acquisition of an emergency-response firm.
- Performed a valuation of a controlling interest in an insurance-claims processor.
- Performed a valuation of a controlling interest in a coin-operated laundry.
- Evaluated economic loss to many other types of businesses, including:
  - Photo finishers
  - Information technologists
  - Funeral homes
  - Dry cleaners
  - Grocers
  - Medical practices
  - Cable TV services
  - Interpreters



## Personal Injury and Wrongful Death Matters

Calculated economic loss to individuals in a variety of occupations, including:

- Accountants
- Children with projected lost future earnings
- Construction workers
- Doctors, nurses and other medical professionals
- Financial advisors (including FINRA Arbitrations)
- Homemakers
- Information technologists
- Lawyers
- Mechanics
- Pilots
- Police officers
- Retirees
- Sales representatives
- Teachers
- Union members  
(ironworkers, carpenters, steamfitters, electrical workers, laborers and painters)

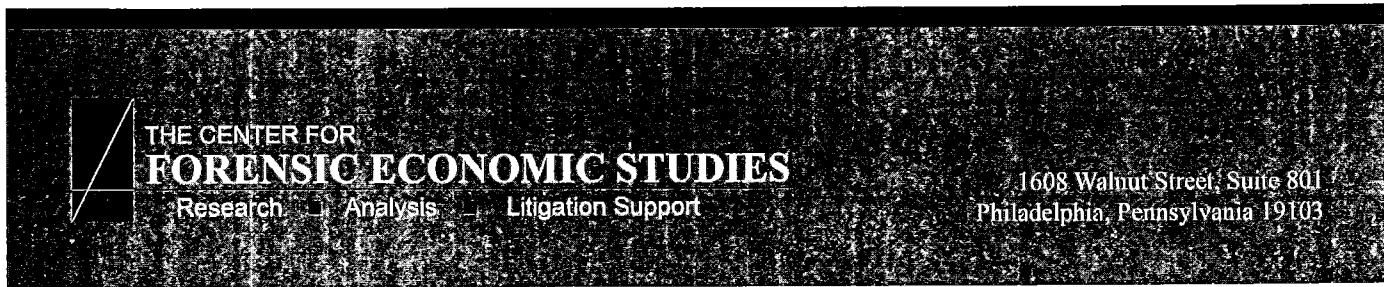
## Publications

- "What's It Worth? Best Practices in Defending Economic Damages in the Catastrophic Accident." (with Matthew Keris), Litigation Management Magazine, Fall 2012.
- "Without a Floor There is Only a Ceiling." Counter Point, Pennsylvania Defense Institute, August 2012.
- "PA Courts Make the Case for Detailed Damages Arguments," New Jersey Law Journal, May 23, 2012.
- "PA Courts Make the Case for Detailed Damages Arguments," Pennsylvania Law Weekly, May 8, 2012.
- "Personal Injury Damages Road Map," US Law Magazine Spring/Summer 2012.
- "Is It Finally Time to Challenge Kaczkowski," Counterpoint (the Pennsylvania Defense Institute), October 2011.
- "Goodbye Kaczkowski? A Recent Ruling Reopens the Door to Debate," The Pennsylvania Law Weekly, May 20, 2011.
- "Practice Tip: Lost Earning Capacity of Undocumented Workers," Product Liability Law & Strategy, May 2011.
- "The Basics of Pension Damages," Product Liability Law & Strategy, October 2010.
- "Hedonic Damages Update," Product Liability Law & Strategy, February 2010.
- "A Tax Break for Plaintiffs Raises Interesting Issues," Employment Law Strategist, November 2009 (With Stephen M. Dripps).
- "An Economist Defends Against Punitive Damages," Product Liability Law & Strategy, December 2008.
- "Determining Damages in the Keystone State," At Issue, Young Lawyers Division of the Pennsylvania Bar Association, Winter 2008.
- "Determining Damages to Entrepreneurs," Product Liability Law & Strategy, February 2008.
- "The Earning Capacity of Business Owners," Product Liability Law & Strategy, November 2007.
- "Economic Damages 101," The Sidebar: The New Lawyers Division Newsletter, American Association for Justice, Fall 2007.
- "Sixth Circuit Rules on Privilege in Two Cases," Product Liability Law & Strategy, April 2007.



## Faculty/Lectures

- Temple University's Beasley School of Law LL.M. in Trial Advocacy program, 2007 - present.
- Rutgers Institute for Professional Education, 2011- present.
- Villanova University School of Law, 2005 - present.
- Drexel University's Thomas R. Kline School of Law Trial Advocacy Program, 2012 - present.
- University of Pennsylvania, Organizational Dynamics Exchange Network, Graduate Division of Arts & Sciences, November 2011.
- University of Baltimore School of Law, October 2013, November 2010.
- Mid Atlantic Council Institute of Management Accountants, November 2015, Exton, Pennsylvania.
- Main Line Association for Continuing Education, "MACE" Accounting, Malvern, PA March 2014.
- American Association of Nurse Life Care Planners, Philadelphia PA, November 2013
- American Rehabilitation Economics Association, June 2016
- Pennsylvania Defense Institute, Annual Conference, July 2013
- Philadelphia Bar Association, Medical Legal Committee Meeting, February 2013.
- National Business Institute, Philadelphia, Pennsylvania, December 2007.
- National Business Institute, Philadelphia, Pennsylvania, December 2008.
- National Business Institute, Philadelphia, Pennsylvania, December 2010.
- National Business Institute, Philadelphia, Pennsylvania, November 2013.
- National Business Institute, Philadelphia, Pennsylvania, February 2015.
- Council on Litigation Management: Orlando, FL, April 2016, Boca Raton, FL, April 2014, Boston, MA, July 2013, San Antonio, TX, April 2013, Nashville, TN, November 2012, Washington, DC, May 2012, Philadelphia, PA, October 2011, Milwaukee, WI, June 2011, New Orleans, LA, March 2011, Jacksonville, FL, March 2010.
- Defense Research Institute (DRI), Civil Rights and Governmental Tort Liability Seminar, Miami Beach, February 2012.
- Ballard Spahr, Philadelphia, Pennsylvania, May 2010, May 2012, May 2014.
- Cozen O'Connor Trial Academy (COTA), Philadelphia, Pennsylvania, June 2009, June 2011, June 2013 and June 2015.
- PIAA, November 2105, New Orleans, Louisiana.
- US Attorney's Office, Newark, New Jersey, December 2010.
- Sunoco, Philadelphia, December 2010.
- Middlesex Community College paralegal program, Middlesex, New Jersey, November 2008.
- New York City Law Department, New York, New York, 2008.
- Law Firms throughout the U.S.
- Defense Research Institute (DRI), Defending Trucking Litigation, A Primer for Young Lawyers, Chicago Illinois, June 2015.



## Testimony

### Federal Court:

District of Columbia, District of New Jersey, Eastern District of Pennsylvania, Middle District of Pennsylvania, Southern District of New York, District of Delaware, Eastern District of New York, District of Maryland

### State Court:

Delaware, District of Columbia, Florida, Illinois, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Virginia

## State Bar Memberships

- Maryland
- Pennsylvania
- New Jersey

## Contact Information

1608 Walnut Street, Suite 801,  
Philadelphia, Pennsylvania 19103

Toll Free: 800.966.6099

Telephone: 215.546.5600

Fax: 215.732.8158

[www.cbes.com](http://www.cbes.com)

## Testimony List for Chad L. Staller, Esq., M.B.A., M.A.C.

| Month/<br>Year | Case Name  | Location              | Type       |
|----------------|--|-----------------------|------------|
| Nov 16         | Estate of William S. Hartman, Jr. v. Carborundum     | Harrisburg, PA        | Trial      |
| Nov 16         | Martin T. Fischer, III v. Christopher D. Kager, M.   | Lancaster, PA         | Trial      |
| Nov 16         | James LaGarde et al v. PRMC et al                    | Philadelphia, PA      | Deposition |
| Oct 16         | Ronald Frantz v. Brett Roberts, M.D. et al           | Philadelphia, PA      | Deposition |
| Oct 16         | Estate of Edward Brittain v. Johns Hopkins Bayvie    | Philadelphia, PA      | Deposition |
| Oct 16         | Matthew Borden v. Sean Ondish and Christa Ondis      | Philadelphia, PA      | Trial      |
| Oct 16         | Arjay Punzalan, Jr. v. Lauren Rodgers, M.D. et al    | Upper Marlboro, MD    | Trial      |
| Sep 16         | Adriana Reichard v. Hitesh Amin, M.D. et al          | Philadelphia, PA      | Deposition |
| Sep 16         | Raymond Edward Carter, Jr. et al v. Toshio Sasnor    | Philadelphia, PA      | Deposition |
| Sep 16         | Kyle Reber, a minor v. University of Maryland Me     | Philadelphia, PA      | Deposition |
| Sep 16         | Suzanne L. Houser et al v. Tamra L. Heimert, M.D.    | Carlisle, PA          | Trial      |
| Sep 16         | Estate of John Ryan v. Barbara Holbert, M.D. et al   | Boston, Massachusetts | Trial      |
| Aug 16         | Estate of Leonard Wayda v. Charles Burns, Jr., M.    | Wilkes-Barre, PA      | Trial      |
| Aug 16         | Ava McGuire et el v. Mark Conway, M.D. et al         | Philadelphia, PA      | Deposition |
| Aug 16         | Sandra Juarez et al v. DC Water and Sewer Authori    | Washington, DC        | Deposition |
| Aug 16         | David P. Suresch et al v. Kelley Elizabeth Banagan   | Philadelphia, PA      | Deposition |
| Jul 16         | Estate of Ryan Imwold et al v. Jeffrey L. Fillmore,  | Philadelphia, PA      | Deposition |
| Jul 16         | D&L Typing Service, Inc. v. Milton Hershey Medi      | Stroudsburg, PA       | Trial      |
| Jul 16         | Estate of Deborah Wells v. Drexel Univ College of    | Philadelphia, PA      | Trial      |
| Jun 16         | Donelle Schultz, et al. v. Johns Hopkins Hospital    | Philadelphia, PA      | Deposition |
| Jun 16         | Daniel Ancherahi v. GEICO                            | Scranton, PA          | Trial      |
| Jun 16         | Kamora Murrell, a minor, et al. v. James E. Riojas,  | Liberty, MO           | Trial      |
| May 16         | Ralph M. Bailets v. Pennsylvania Turnpike Commi      | Harrisburg, PA        | Trial      |
| May 16         | Scott R. Storick v. MetLife Securities, Inc., et al. | Boca Raton, FL        | Trial      |
| May 16         | Dimas M. Chavez, et ux. v. Wal-Mart Stores, Inc.,    | Rockville, MD         | Trial      |
| May 16         | Kevin F. Ryan v. Patrick Zarwie, et al.              | Philadelphia, PA      | Trial      |
| May 16         | Elizabeth K. Newsholme, et al. v. Palms West Hos     | Philadelphia, PA      | Deposition |
| Apr 16         | Sarah G. Stauffer, et al. v. F-F Athletic Company, I | Allentown, PA         | Trial      |
| Apr 16         | Pamela Hill, Parent of Malakhi Hill v. John K. Yac   | Philadelphia, PA      | Deposition |
| Apr 16         | Antoine Elias Kfuri, M.D., et al. v. Ismail Ahmad S  | Towson, MD            | Trial      |
| Apr 16         | Elliot D. Engel v. Abington Memorial Hospital, et    | Norristown, PA        | Trial      |
| Apr 16         | John Cannon, Sr., et al. v. Joseph F. Richardson, P  | Philadelphia, PA      | Deposition |
| Apr 16         | Richard C. Angino, et al. v. The Cincinnati Insuran  | Harrisburg, PA        | Trial      |
| Apr 16         | Marlene Drody v. University of Medicine & Dentis     | Philadelphia, PA      | Deposition |
| Apr 16         | Keith Matteson, et al. v. Central Bucks Cardiology,  | Doylestown, PA        | Trial      |
| Apr 16         | Wayne Simpson v. Prince Telecom, LLC                 | Wilmington, DE        | Deposition |
| Apr 16         | Joel S. Lippman, M.D. v. Ethicon, Inc., & Johnson    | New Brunswick, NJ     | Trial      |
| Apr 16         | Leslie Scott Matthews, M.D., et al. v. Maia Gottlie  | Philadelphia, PA      | Deposition |
| Apr 16         | Rainmaker Capital of Mt. Effort, LLC v. Tender Tr    | Stroudsburg, PA       | Trial      |
| Mar 16         | Scott Maxwell, a minor, et al. v. Union Hospital of  | Philadelphia, PA      | Deposition |
| Mar 16         | Peter Khouri, et al. v. Outdoor Expressions, LLC, e  | Carlisle, PA          | Trial      |
| Mar 16         | Estate of Teshima Lashaun Walker, et al. v. Kaiser   | Philadelphia, PA      | Deposition |
| Mar 16         | Mailauni R. Williams Irrevocable Trust v. Henry F    | Philadelphia, PA      | Deposition |
| Feb 16         | Alaina Harris v. Chel Lee-Pow, D.C., et al.          | Greenbelt, MD         | Trial      |
| Feb 16         | Estate of Calvin M. Wilson, Jr. v. Kahliile Gray     | Philadelphia, PA      | Trial      |
| Feb 16         | Estate of Raymond Nicholas Moore, et al. v. Micha    | Philadelphia, PA      | Deposition |
| Feb 16         | Antoine Elias Kfuri, M.D., et al v. Ismail A. Shalab | Philadelphia, PA      | Deposition |
| Feb 16         | Ora Sincere, Conservator for Delisa Sincere v. Hen   | Philadelphia, PA      | Deposition |
| Feb 16         | Thomas Lee Finley, Jr. v. Paul M. Apostolo, M.D.     | Philadelphia, PA      | Deposition |
| Feb 16         | Mashell J. Smith, et al. v. University of Maryland   | Philadelphia, PA      | Deposition |

## Testimony List for Chad L. Staller, Esq., M.B.A., M.A.C.

| Month/<br>Year | Case Name  | Location         | Type       |
|----------------|--|------------------|------------|
| Jan 16         | Simone DeVito, M.D., et al. v. William Butler, M.                | Boston, MA       | Trial      |
| Jan 16         | Joel S. Lippman, M.D. v. Ethicon, Inc. and Johnson & Johnson     | Philadelphia, PA | Deposition |
| Jan 16         | Estate of James Vaughn, et al. v. Jeffrey I. Jackerson           | Wilmington, DE   | Deposition |
| Jan 16         | Estate of Ainsworth Mallet, et al. v. Schmidt Bakin              | Philadelphia, PA | Deposition |
| Dec 15         | Travis Emery v. Johns Hopkins Hospital                           | Philadelphia, PA | Deposition |
| Dec 15         | Lee Siegel v. Bloomberg, L.P., et al.                            | Philadelphia, PA | Deposition |
| Dec 15         | Glenn Jones v. Rutgers, The State University of New Jersey       | Newark, NJ       | Deposition |
| Dec 15         | Prakash Raghubar v. Amrit, Inc., et al.                          | Baltimore, MD    | Trial      |
| Nov 15         | Angelique Kerr-Loper v. Verizon Wireless, et al.                 | Philadelphia, PA | Deposition |
| Nov 15         | Lafayette James v. Albert Einstein Medical Center, et al.        | Philadelphia, PA | Trial      |
| Nov 15         | Neil Ross, M.D., et al. v. Gail Glotfelsy Kramer, M.D.           | Philadelphia, PA | Deposition |
| Oct 15         | Jose Rodriguez v. Troy W. Fraker, et al.                         | Cherry Hill, NJ  | Deposition |
| Oct 15         | Timothy L. Dorer, et al. v. Concrete Restoration, Inc.           | York, PA         | Trial      |
| Oct 15         | James O. Scott, Jr. v. United States of America                  | Washington D.C.  | Trial      |
| Oct 15         | Brian Hinckley, et al. v. Burton A. Waisbren, Jr., M.D.          | Mt. Laurel, NJ   | Deposition |
| Sep 15         | Lucia DiStefano, et al. v. Carroll Hospital Center, Inc.         | Philadelphia, PA | Deposition |
| Sep 15         | Shawn Coleman v. Yafl 3, Inc., et al.                            | Philadelphia, PA | Trial      |
| Jun 15         | Estate of Joseph Luton v. Phoenixville Hospital                  | West Chester, PA | Trial      |
| Jun 15         | Albert Wolf v. Fujitsu America, Inc., et al.                     | Hackensack, NJ   | Trial      |
| Jun 15         | Isaiah Amaya Perez, et al. v. Lauren Mayer, CRN                  | Philadelphia, PA | Deposition |
| Jun 15         | Robert Triebe v. State of New Jersey, et al.                     | Philadelphia, PA | Deposition |
| May 15         | Christina Villavicencio, et al. v. NY City Dept of Education     | Brooklyn, NY     | Trial      |
| May 15         | Carolyn Lovejoy, et al. v. New York City Department of Education | Brooklyn, NY     | Trial      |
| Apr 15         | Charles Santore v. Nationwide Mutual Insurance Company           | Philadelphia, PA | Trial      |
| Apr 15         | Andrew Roebuck v. Bear Creek Mountain Resort, et al.             | Reading, PA      | Trial      |
| Apr 15         | Atlantic City Electric Company v. Wal-Mart Stores                | Cherry Hill, NJ  | Deposition |
| Mar 15         | Anita Saah v. Bradley Dick, M.D., et al.                         | Rockville, MD    | Trial      |
| Mar 15         | Delaney Grey v. Tutasi Waters, M.D., et al.                      | Plymouth, MA     | Trial      |
| Mar 15         | Stanely Ray White, et al. v. Douglas Winfred Rudo                | Philadelphia, PA | Deposition |
| Feb 15         | Estate of Tanya Renee Wilson v. U.S. Sec. Assoc., et al.         | Philadelphia, PA | Trial      |
| Feb 15         | Estate of Latonya Brown v. U.S. Sec. Assoc., et al.              | Philadelphia, PA | Trial      |
| Feb 15         | Steven Leventhal, et al. v. John W. Warwick, III, et al.         | Trenton, NJ      | Trial      |
| Feb 15         | Matish, et al. v. Jospeh P. Riley, D.O., et al.                  | Philadelphia, PA | Deposition |
| Feb 15         | Romeo Morgan, a/k/a Anthony Williams v. Jay Weir                 | Philadelphia, PA | Deposition |
| Feb 15         | Enna Rodas v. Richard W. Nystrom, et al.                         | Rockville, MD    | Trial      |
| Jan 15         | Estate of Richard Frey v. Robert Potorski, M.D., et al.          | Wilkes-Barre, PA | Trial      |
| Jan 15         | Timothy P. Walsh v. James Gregory Howard, et al.                 | Philadelphia, PA | Deposition |
| Jan 15         | Estate of Deanna Nicole v. City of Philadelphia                  | Philadelphia, PA | Trial      |
| Jan 15         | Shinsuke Konno, et al. v. Kiyomi Yamanaka, et al.                | Georgetown, DE   | Trial      |
| Jan 15         | Evelyn Downey, et al. v. District of Columbia, et al.            | Washington, DC   | Trial      |
| Dec 14         | Peter Watson, et al. v. Suzanne R. Davis, Inc., et al.           | Washington, D.C. | Deposition |
| Dec 14         | Edward Holldenshade, Jr. v. Kerry Clement Prewitt                | Philadelphia, PA | Deposition |
| Dec 14         | David Edwards v. Delilah's Den                                   | Philadelphia, PA | Trial      |
| Dec 14         | Sarah Connors v. Target  | Newark, NJ       | Trial      |
| Nov 14         | Raheel Malik v. Cooper Tire & Rubber Company                     | Philadelphia, PA | Deposition |
| Nov 14         | Andre Henry v. Delaware State University                         | Wilmington, DE   | Deposition |
| Nov 14         | Scott Toth v. Plaid Paisley Enterprises                          | Philadelphia, PA | Deposition |
| Nov 14         | Gregory Morris v. York Excavating Company                        | Frederick, MD    | Trial      |
| Oct 14         | Raymond Grote v. Carl A. Frankel, M.D.                           | Harrisburg, PA   | Trial      |
| Oct 14         | Lauren Adle v. Michael Anton Gillespie, M.D.                     | Philadelphia, PA | Deposition |

## Testimony List for Chad L. Staller, Esq., M.B.A., M.A.C.

| Month/<br>Year | Case Name  | Location           | Type       |
|----------------|--|--------------------|------------|
| Oct 14         | Mark W. Darragh v. Nationwide Mutual Insurance       | Sanford, FL        | Trial      |
| Oct 14         | Estate of Ejay Santiago v. York Hospital             | York, PA           | Trial      |
| Oct 14         | Anita Saah v. Bradley Dick, M.D.                     | Philadelphia, PA   | Deposition |
| Oct 14         | Robert Butka v. Joseph John Andrews, M.D.            | Wilkes Barre, PA   | Trial      |
| Sep 14         | Charles Bonner, Ph.D. v. K12, Inc.                   | Philadelphia, PA   | Trial      |
| Sep 14         | Angela Barrett v. Federal Express Corporation        | Philadelphia, PA   | Trial      |
| Sep 14         | George Hardy v. Anthony Chiaramonte, III, M.D.       | Towson, MD         | Trial      |
| Sep 14         | Lisa Tisdel v. Eugene Harasym, M.D., et al           | Scranton, PA       | Trial      |
| Sep 14         | Dayon Pattawi v. Mercy Hospital                      | Philadelphia, PA   | Deposition |
| Sep 14         | Est. of Raj Kumar Chopra v. Berlin County Apart      | Mount Laurel, NJ   | Deposition |
| Sep 14         | Gregory Morris, Sr. v. York Excavating, Inc.         | Philadelphia, PA   | Deposition |
| Aug 14         | Estate of Lucas Sieg v. Covington Township Mun.      | Clearfield, PA     | Trial      |
| Jul 14         | George Edward Hardy, Jr. v. Anthony Chiaramonte      | Philadelphia, PA   | Deposition |
| Jul 14         | Judith Mitnick v. Linda E. Rosenthal                 | Towson, MD         | Trial      |
| Jul 14         | Terry Hopper v. Marc S. Williams, D.O.               | Bloomsburg, PA     | Trial      |
| Jul 14         | Est. of Margaret A. Mateja v. Chestnut Hill Hospit   | Philadelphia, PA   | Trial      |
| Jul 14         | Geraldine Coward v. Washington Hospital Center       | Philadelphia, PA   | Deposition |
| Jun 14         | Est. of Frederick Wayne Shawl v. Howard Slotorof     | Philadelphia, PA   | Deposition |
| Jun 14         | Estate of Opal Nojunas v. John R. Mulvey, M.D.       | Elkton, MD         | Trial      |
| Jun 14         | Adam Thissell v. Frank Wilson, M.D., et al           | Plymouth, MA       | Trial      |
| Jun 14         | Abraham Mbony, et al v. Xtreme Acro & Cheer          | Philadelphia, PA   | Deposition |
| Jun 14         | Judith Faye Mitnick v. Linda Rosenthal, M.D.         | Philadelphia, PA   | Deposition |
| Jun 14         | Estate of John Foley v. St. Lucie Medical Specialist | Philadelphia, PA   | Deposition |
| May 14         | Trinity Elias v. Michelle Phillips, R.N.             | Boston, MA         | Trial      |
| Apr 14         | Mark W. Darragh v. Nationwide                        | Boca Raton, FL     | Deposition |
| Apr 14         | Est. of Nelson L. Degangi v. Borg-Warner Corp.       | Wilmington, DE     | Trial      |
| Apr 14         | Roman Szyjka v. Peter Vandermeer, M.D.               | Baltimore, MD      | Deposition |
| Mar 14         | Estate of Elysia Durgam v. Holy Cross Hospital       | Philadelphia, PA   | Deposition |
| Mar 14         | Aundre Anderson v. ATMI, Inc.                        | Philadelphia, PA   | Deposition |
| Mar 14         | Kathryn Rawles v. Nieva T. Duque-Salva, M.D.         | Philadelphia, PA   | Deposition |
| Mar 14         | Estate of Susan Lee Bott v. Ira M. Thal, M.D.        | West Chester, PA   | Trial      |
| Mar 14         | Estate of Lee Lumpkins v. Samuel Galvagno, M.D.      | Philadelphia, PA   | Deposition |
| Mar 14         | Carolyn Lovejoy, et al v. NYC Department of Edu      | Brooklyn, New York | Trial      |
| Feb 14         | Oleh Ljachin, Jr. v. Armour & Sons Electric, Inc.    | Philadelphia, PA   | Trial      |
| Feb 14         | Michael Mills v. Office Basics, Inc.                 | Philadelphia, PA   | Trial      |
| Feb 14         | Danielle Vincent v. New Castle County, Delaware      | Hockessin, DE      | Deposition |
| Feb 14         | Spectrum Clinical Research v. St. Joseph's Medical   | Towson, MD         | Trial      |
| Feb 14         | City of Baltimore v. Unisys Corporation              | Baltimore, MD      | Deposition |
| Feb 14         | Jay Nilson v. Softmart, et al                        | Philadelphia, PA   | Deposition |
| Jan 14         | Elizabeth Musso v. County of Bergen                  | Philadelphia, PA   | Deposition |
| Jan 14         | Spectrum Clinical Research v. St. Joseph's Medical   | Philadelphia, PA   | Deposition |
| Jan 14         | William Gooch, et al v. Patient First Maryland Med   | Philadelphia, PA   | Deposition |
| Jan 14         | Lillian Marie Ciechoski v. Phoenixville Hospital     | West Chester, PA   | Trial      |
| Jan 14         | Sandra Rumanek v. Independent School Managem         | Wilmington, DE     | Trial      |
| Dec 13         | Roman Szyjka v. Peter Vandermeer, M.D.               | Philadelphia, PA   | Deposition |
| Dec 13         | Mitchell Eismont v. Dae Wa Industries                | Philadelphia, PA   | Deposition |
| Dec 13         | Nadira Smith v. Albert Einstein Medical Center, et   | Philadelphia, PA   | Trial      |
| Nov 13         | Jacqueline Farrar v. Jay Nathan, M.D.                | Minneola, NY       | Trial      |
| Nov 13         | Daniel Cito v. Matthew S. Bergey, et al              | Philadelphia, PA   | Deposition |
| Nov 13         | Edward Xu, et al v. Theresa Willett, M.D             | Boston, MA         | Trial      |

## Testimony List for Chad L. Staller, Esq., M.B.A., M.A.C.

| Month/<br>Year | Case Name   | Location          | Type       |
|----------------|---|-------------------|------------|
| Oct 13         | Kam-Chiu Lee v. Bruce S. Worrell, D.O., et al       | Hamilton OH       | Trial      |
| Oct 13         | Sumeet Goel v. Nationwide                           | Baltimore, MD     | Deposition |
| Sep 13         | Teach Solais LP v. Ernest R. Wilke                  | Philadelphia, PA  | Trial      |
| Aug 13         | Kam Lee v. Bruce Worrell, M.D.                      | Philadelphia, PA  | Deposition |
| Jun 13         | Wayman Fire Protection v. Premium Fire & Servic     | Wilmington, DE    | Trial      |
| Jun 13         | Estate of Ashley Judge v. HTCAA, et al              | Wilkes-Barre, PA  | Trial      |
| Jun 13         | Jose Noel Ramos v. Astra Foods                      | Philadelphia, PA  | Trial      |
| May 13         | Estate of Johnquan Wright v. District of Columbia   | Washington, DC    | Trial      |
| May 13         | Sandra Rumanek v. Independent School Managem        | Wilmington, DE    | Deposition |
| Apr 13         | Thomas Humphrey v. Mercer County                    | Trenton, NJ       | Trial      |
| Apr 13         | Estate of Daniel W. Sullivan, Jr. v. Ajay Bakhshi,  | Philadelphia, PA  | Deposition |
| Mar 13         | Doreen Klevinsky v. Mary Bielik                     | Philadelphia, PA  | Deposition |
| Mar 13         | Estate of Kristy McRiffey v. Richard Philip Frankli | Philadelphia, PA  | Deposition |
| Mar 13         | Laura A. Jimenez v. Edward Denmead, et al           | Elizabeth, NJ     | Trial      |
| Feb 13         | Estate of David P. Hurn v. David Makram Bishai,     | Philadelphia, PA  | Deposition |
| Feb 13         | Estate of Sally Flowers v. Evelyn D. Jackson, M.D.  | Philadelphia, PA  | Deposition |
| Feb 13         | Aubrey Wright v. Holy Cross Hospital                | Philadelphia, PA  | Deposition |
| Feb 13         | Jacquelyn Goodman v. Advanced Radiology             | Philadelphia, PA  | Deposition |
| Feb 13         | Catherine Corbitt v. Tipton Trucking Company, et    | Philadelphia, PA  | Trial      |
| Jan 13         | Jeannette Rodriguez v. Archana Raj Rao,M.D.         | Philadelphia, PA  | Deposition |
| Jan 13         | Tiffany Craig v. Georgette Kendo Bilburn, M.D., e   | Philadelphia, PA  | Deposition |
| Dec 12         | LaShunda Smith v. Ratan R. Park, et al              | Hackensack, NJ    | Trial      |
| Dec 12         | Rondra Marcelli v. Capitol Cleaning Concepts        | Ellicott City, MD | Trial      |

## Testimony List for James Markham, Ph.D., J.D., CPCU

| Month/<br>Year | Case Name  | Location              | Type       |
|----------------|--|-----------------------|------------|
| Mar 16         | John Ray, PPA John Ray, Erin Ray and John Ray v    | Lawrence, MA          | Trial      |
| Jan 16         | Jeniah Gallego, PPA Jeanette Gutierrez v. Emily W  | Springfield, MA       | Trial      |
| Sep 15         | Jakwan Davis, et al. v. Janet Conley, M.D., et al. | Worcester, MA         | Trial      |
| Aug 15         | Dale Ihnken v. Jane Garnder, et al.                | Baltimore, MD         | Trial      |
| Jul 15         | Estate of Mark Lucius v. Duane Pinto, M.D., et al. | Suffolk County, MA    | Trial      |
| May 15         | Estate of Elaine Booker v. United States           | Philadelphia, PA      | Trial      |
| May 15         | Estate of Elaine Booker v. United States           | Philadelphia, PA      | Trial      |
| Oct 14         | PICA v. Hewlett Packard Company                    | New Castle County, DE | Trial      |
| Oct 14         | Estate of Louis T. Goll v. Ace Hardware            | Philadelphia, PA      | Trial      |
| Aug 14         | Joseph Wagner v. Perry Warren                      | Philadelphia, PA      | Trial      |
| Jul 14         | Maglio Foods v. Charter Oak Insurance Company      | Philadelphia, PA      | Trial      |
| Jun 14         | Santiago Cortes, et al v. J.C. Penney Corporation  | New York, NY          | Trial      |
| May 14         | Nina Shervin, M.D. v. Partners Healthcare System   | Boston, MA            | Trial      |
| May 14         | Lewis J. Pagano v. Kumar Sinha                     | Philadelphia, PA      | Deposition |
| Apr 14         | PSCOA Consult                                      | Harrisburg, PA        | Trial      |
| Apr 14         | Eugene J. Corrado v. Balfour Beatty Construction   | Upper Marlboro, MD    | Trial      |
| Mar 14         | PICA v. Hewlett-Packard Company                    | Wilmington, DE        | Deposition |
| Feb 14         | Anthony Sollitto v. Gleeson Construction Co.       | Cape May County, NJ   | Trial      |
| Feb 14         | Jay Nilson v. Softmart, et al                      | Philadelphia, PA      | Deposition |
| Dec 13         | Mackenzie Barnes v. Robert Vanderlin, M.D.         | Boston, MA            | Trial      |
| Nov 13         | Estate of Nayelis R. Roman v. United States        | Philadelphia, PA      | Trial      |
| Oct 13         | Hailey Velho v. Yun J. Lee, M.D., et al            | New Bedford, MA       | Trial      |
| Oct 13         | Catherine Marcucci, M.D. v. Department of Vetera   | Philadelphia, PA      | Deposition |
| Sep 13         | Peter Klimaszewski v. Kimberly Porter, RN, et al   | Philadelphia, PA      | Deposition |
| Aug 13         | Smyrna Hospitality v. Petrucon Construction        | Wilmington, DE        | Deposition |
| Aug 13         | Thomas Conway v. Walker Nell Partners, Inc.        | Philadelphia, PA      | Trial      |
| Mar 13         | Coleen Curran v. Juan S. Mendez                    | Atlantic City, NJ     | Trial      |
| Feb 13         | Mary Ellen Breen v. Francis Breen                  | Doylestown, PA        | Trial      |
| Feb 13         | Carter Emond v. Jonathan Friedes, M.D              | Boston, MA            | Trial      |
| Jan 13         | Golden Star, Inc. v. Mass Mutual Life Insurance C  | Philadelphia, PA      | Deposition |
| Oct 12         | Karen Brandli v. Micrus Endovascular Corp.         | Philadelphia, PA      | Deposition |
| Sep 12         | Local Union No. 98 v. RGB Services, LLC            | Philadelphia, PA      | Trial      |
| Aug 12         | Michael and Roseanne Panebianco v. Marine Max      | New Brunswick, NJ     | Deposition |
| Jul 12         | Megan Petry v. Savannah College of Art             | Egg Harbor, NJ        | Deposition |
| Jul 12         | Esate of Burnell Polk, Sr. v. Hector E. Sanchez    | Philadelphia, PA      | Trial      |
| May 12         | David Huang, et al v. Joseph C. Lin, M.D., et al   | Baltimore, MD         | Trial      |
| May 12         | Marist College v. Matt Brady, et al                | Poughkeepsie, NY      | Trial      |
| Mar 12         | Sean Hogan v. Melody J. Eckhardt, M.D., et al      | Dedham, MA            | Trial      |